

Minerals Planning Guidance 2: Applications, permissions and conditions

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Introduction

1. MPG1 '*General Considerations and the Development Plan System*' sets out the Government's policies on minerals and planning issues and provides advice on the operation of the development plan system with regard to minerals. This guidance note provides advice on those aspects of the development control system of particular relevance to minerals and on the preparation and determination of individual planning applications.

Meaning of development and need for planning permission

2. Section 57 of the *Town and Country Planning Act 1990* (the '1990 Act') provides that planning permission is generally required before any development of land can be carried out. Development is defined in section 55(1) of the Act as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. 'mining operations' are not defined in the Act but by virtue of section 55(4) of the 1990 Act, includes the removal of material of any description:

- i. from a mineral-working deposit;
- ii. from a deposit of pulverised fuel ash or other furnace ash or clinker; or
- iii. from a deposit of iron, steel or other metallic slags;

and the extraction of minerals from a disused railway embankment.

3. A 'mineral, working deposit' is defined in section 336(1) of the 1990 Act as meaning 'any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land'. The term 'minerals' is defined as including 'all substances of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale'.

4. 'Mining operations' are separately defined for the purposes of the Town and Country Planning (General Permitted Development) Order 1995 (the 'GPDO') as 'the winning and working of minerals in, on or under land, whether by surface or underground working.'

5. 'The winning and working of minerals', is not statutorily defined but mineral planning authorities ('MPAs') and industry may find it useful to consider the judgements given in the cases of *English Clays Lovering Pochin and Co Ltd v Plymouth Corporation* (1974) and *South Glamorgan County Council v Hobbs (Quarries)* (1980) which indicate that 'winning and working' consists of the preparation of the ground and the extraction of minerals.

6. The extraction of minerals is substantially different from building and engineering operations. It bears more similarity to the 'use' aspect of the definition of development to the extent that it is a continuing activity, which can take place over many years and is an end in itself. Although for the general purposes of the 1990 Act mining is treated as an 'operation', it is a continuing operation and each shovelful extracted from an area is a mining operation constituting a separate act of development (*Thomas David (Porthcawl) Ltd v Penybont Rural District Council* (1972) Court of Appeal). For the purposes of discontinuance action, under paragraph 1 of Schedule 9 to the 1990 Act, mining operations and the depositing of mineral waste are regarded as a 'use' of land. The

Town and Country Planning (Minerals) Regulations 1995 (the '1995 Minerals Regulations') (see Annex A) also modify certain provisions of the 1990 Act in their application to minerals development.

7. Where there is doubt as to whether the intended operations or use of land requires planning permission, an application can be made to the MPA under section 192 of the 1990 Act to determine whether planning permission is required. (Paragraph 12 of MPG1 explains which planning authorities are MPAs.) Section 192 applications must be in writing and contain a description of the operations or change of use proposed. An application must be accompanied by a plan which identifies the land to which it relates. Where it concerns the carrying out of operations, any drawings that are necessary to describe the operations must also be included. Similarly where it concerns a change of use, a full description of the proposed use and the present use (if no present use then the last use of the land) must be included. The procedural requirements for applications are set out in full in article 24 of the Town and Country Planning (General Development Procedure) Order 1995 ('the GDPO'). Section 192 applications may be made as part of an application for planning permission and are subject to similar provisions regarding references and appeals to the Secretaries of State and applications to the High Court as planning applications.

Permitted Development Rights

8. It will not always be necessary to make an application for planning permission before carrying out operations on land or making a change in the use of land. The operations or use proposed may not constitute development within the meaning of the 1990 Act; even if they do constitute development, they may be exempted by the Act from the need for permission, or permission for them may have been granted by the GPDO. It is the responsibility of the applicant to check whether planning permission is required and developers should therefore contact the MPA at an early stage.

9. Article 3 of the GPDO grants a general permission for the carrying out of certain types of development which are set out in Schedule 2 to the Order. The purpose of this general permission is to provide developers with a certain amount of flexibility to carry out works which would not significantly alter the impact of their operation on the surrounding area. Parts 19 to 23 of Schedule 2 to the GPDO grant general permissions for certain types of mineral development. Part 19 deals with development ancillary to mining operations other than coal; Part 20 deals with certain underground coal mining operations and ancillary surface workings; Part 21 deals with mineral waste tipping; Part 22 with exploration for minerals; and Part 23 with the removal of material from mineral working deposits. Detailed advice on these rights, and the power to withdraw them, is given in Annex B. In addition, Class C of Part 6 of Schedule 2 to the GPDO grants a limited permission for mineral working for agricultural purposes.

Pre-application consultations

10. Before making a formal application to carry out development consisting of the winning and working of minerals or involving the depositing of mineral waste ('minerals development') the applicant should consult as fully as possible with the MPA. The intention of pre-application consultations should be to develop an understanding by the MPA of the operator's intentions and by the operator of the authority's views and requirements. They may also enable a start to be made on the investigations which are often necessary for mineral applications. The consultations could involve the mineral operator describing the proposed development and showing draft drawings possibly illustrating the various ways the site could be developed. The mineral operator should also tell the MPA about any other approvals they are seeking in parallel, for example footpath orders

and pollution control authorisations. During such consultations the MPA may be able to help the applicant by providing the following guidance:

- Details of their policies on the type of development proposed and information about relevant planning decisions by the authority.
- Whether the proposal is in accordance with the development plan
- Any likely changes of policy in the near future that would affect such development eg amendments to the plan, consultation documents, or changes to national policy.
- An indication of the nature and extent of extra information that will be required to enable them to determine the application, including whether or not formal Environmental Assessment is likely to be required.
- The organisations the applicant can approach for advice.
- Organisations the planning authority will seek comments from concerning an application for such development.

These organisations may be able to disclose details of standards they use to judge such development or give their informal views on the proposed development.

Effective pre-application consultations should ensure that the operator is better able to produce plans and application documentation that will permit the planning authority to determine the application expeditiously.

11. A clear understanding by all concerned of the proposed development and its impact on the environment will help in the preparation of plans for the operations and subsequent reclamation of the site and could avoid delays at a later stage. However, each party will need to ensure that such consultations do not prejudice the later planning procedures. Consultation should be as free and open as possible.

12. However, there may be occasions where an applicant needs to illustrate the case for the development using information which is commercially confidential. In such cases MPAs should indicate whether they are prepared to receive information on that basis and treat it accordingly. Similarly, applicants should accept that views expressed by officers in informal discussions are not binding on the MPA. The essential point is that there should be as full and frank an exchange of information and views as possible to enable proposals to be properly considered in a transparent way.

13. When a proposed development is likely to have a large impact, in economic or environmental terms, operators may find it useful to give publicity to their proposals, and to meet representatives of the community to explain them and listen to local concerns. In any event they should consider whether the project should be subject to Environmental Assessment. If in doubt they should consult the MPA.

Environmental Assessment

14. Environmental Assessment (EA) is an important process for ensuring that the likely effects of new development are fully understood and taken into account before development is allowed to go ahead, and ideally before the proposals are finalised. Where proposals for mineral development are likely to have significant effects on the environment, applications will need to be subject to EA under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988

(as amended) and an Environmental Statement (ES) prepared. DOE Circular 15/88 (due to be replaced in March 1999) explains the provisions of the Regulations and gives advice on their implementation. General advice is given in DOE/WO guide 'Environmental Assessment: A Guide to the Procedures'(The Stationery Office, 1989) and further advice for developers and advisers is available in 'Preparation of Environmental Statements for Planning Projects that require Environmental Assessment: A Good Practice Guide'(The Stationery Office, 1995).

15. Whether or not a particular minerals development proposal will warrant Environmental Assessment will depend upon such factors as the sensitivity of the location, size, working methods, proposals for disposing of waste, the nature and extent of processing and ancillary operations, and the arrangements for transporting products away from the site and proposals for restoration and aftercare. The duration of the proposed workings is also a factor to be taken into account. The applicant should contact the MPA if they are unsure of the need for EA.

Applications for outline planning permission

16. Applications for outline permission cannot be made for minerals development, but can be made for certain ancillary mining development. Most will be carried out under the provisions of the GPDO. Where, however, a separate application has to be made for permission to erect buildings, it may be made to the MPA for outline planning permission, subject to subsequent approval on matters of siting, design, external appearance, means of access or landscaping. These are termed 'reserved matters'. Applications for approval of reserved matters must be made in writing to the MPA and should be accompanied by sufficient details to identify the outline planning permission and to show the proposals clearly on plans and drawings. Outline planning permission cannot be sought for plant and machinery.

Content of Planning Applications

17. An application for planning permission must be made to the MPA on a form obtained from them. MPAs may find it helpful to use the Standard Minerals Application Form produced by the Department of the Environment, Transport and Regions although this is not mandatory. This form can also be obtained from MPAs. In any event, the completed application form must be accompanied by a plan sufficient to identify the land concerned and by any other plans, drawings and other documentation necessary to describe the development proposal. The MPA will normally require more than one copy of each of these application documents and the application form should state the number of copies required from the applicant. While the regulations require a maximum of 4 copies of the application to be submitted, in exceptional cases it may be appropriate that additional copies be provided. The submission of additional copies will avoid the requirement to copy large and complex documents and enable both the MPA and statutory consultees to consider the application in a timely manner.

18. Where an environmental statement is required the applicant must submit sufficient copies of the statement for the MPA to send to statutory consultees (see DOE circular 15/88).

19. The Department's 'Standard Minerals Application Form' suggests the range of information which will probably be necessary for a satisfactory appraisal of most proposals for minerals development. Vague possible future developments should be excluded from the application, although these can be discussed during any pre-application consultations.

20. Planning applications must be accompanied by the appropriate certificates and fees.

21. The complexity of detail required by the MPA will depend on the circumstances of the particular case. Applicants should make every effort to submit comprehensive information. However, under Article 4 of the Town and Country Planning (Applications) Regulations 1988 [SI 1988 No 1212] an MPA may direct an applicant in writing to supply further information. When seeking extra information from an applicant MPAs should observe the following guidelines:

- Not to request more information than is required to determine the application and ensure that working is carried out in accordance with modern restoration and environmental standards.
- When asking for additional information to give the applicant a clear and comprehensive list of questions and the reasons why the information is required.
- Not, without good reason, to ask applicants to commission expensive data collection or redesign work, especially at a late stage.

MPAs are required to acknowledge receipt of valid applications as soon as practicable. An application is not valid until the correct fee, the appropriate certificates, and any further information required under Article 4 have been provided.

Notification to owners and others

22. Articles 6 and 7 of the GDPO provide that an applicant for planning permission must give notice to any person who is an owner or tenant of the land to which the application relates. Notifications of applications for planning permission for development consisting of the winning and working of minerals must also be served on any person entitled to the interest in a mineral (except oil, gas, coal, gold and silver) in the land to which the application relates. A planning application must be accompanied by a certificate from the applicant stating that:

- a. no person other than the applicant was the owner of any land to which the application related, or
- b. the applicant has notified all the owners, or
- c. the applicant has notified some of the owners, has tried to identify the others (specifying the steps taken) and has advertised the application in a local newspaper, or
- d. the applicant does not know the names and addresses of any of the owners but has advertised the application.

Every certificate must contain a statement either that the application does not affect an agricultural holding or that the agricultural tenant has been notified. The 1990 Act defines an owner as a person who is for the time being the estate owner in respect of the fee simple in the land or is entitled to a tenancy of the land granted or extended for a term of years certain of which not less than seven years remain unexpired.

23. If an application relates to the winning and working of minerals by underground operations it must be accompanied by a certificate stating that the applicant has served notice on every owner or tenant of the land to which the application relates whose name and address are known to the applicant. The applicant must advertise the application in a local newspaper and post a notice of the application where it can clearly be seen by the public in at least one place in every parish or community in which is situated any part of the land to which the application relates; and that the application does not affect an agricultural holding or that the agricultural tenant has been notified.

24. The forms of the certificates and notices are prescribed in Part 2 of Schedule 2 to the GDPO.

Fees for Planning Applications

25. Local planning authorities are required under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1997 to charge prescribed fees for applications for planning permission. The fee should accompany the application sent to the MPA and, irrespective of the nature of the application, cheques and money orders in respect of the fees should be payable to that authority. The eight week period within which the application should be determined does not commence until the correct fee has been paid. The rates are revised periodically and details of the current level and scope of fees can be obtained from local planning authorities.

Advertisement of Planning Applications

26. Article 8 of the GDPO requires planning authorities to advertise planning applications. In the case of applications for minerals development, the MPA must do the following:

(a) if the development is subject to Environmental Assessment, or does not accord with the development plan, or would affect a public right of way to which Part III of the Wildlife and Countryside Act 1981 applies-

- publicise the application by site display in at least one place on or near the land to which the application relates for not less than 21 days, *and*
- by advertisement in a local newspaper.

(b) In any other case-

- publicise the application by site display, or
- by serving notice on any adjoining owner or occupier, *and*
- by advertisement in a local newspaper.

The forms of notice are illustrated in Schedule 3 to the GDPO. Further advice is given in DOE Circular 15/92 .

Notification of owners of certain minerals

27. Article 16 of the GDPO requires MPAs to notify the owners of coal (except alienated coal), gas, oil, gold and silver of any applications to work any minerals in such areas as the owners have previously specified to the authority as areas in which they wish to receive such notification. The owners with entitlement to notification in this respect are the Coal Authority (coal), the Secretary of State for Trade and Industry (gas and oil) and the Crown Estates Commissioners (gold and silver).

Period of representations

28. Article 19 of the GDPO provides that an application for planning permission shall not be determined by the MPA before the end of the period of 21 days beginning with the date when a notice was displayed or served under article 6 or 8 (or 14 days when notice was given by local advertisement). This is to allow time for members of the public and persons with an interest in the land to make representations to the MPA concerning the proposed development.

Period for considering applications

29. Article 20 of the GDPO provides that a decision on a planning application should be given within eight weeks from the date the valid application is received, although the period may be extended if necessary by agreement in writing between the applicant and the local planning authority. Article 16 of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 extends the eight week period to sixteen weeks where the application is accompanied by an Environmental Statement.

30. The eight week limit applies to applications for any consent, agreement or approval required by a condition on a planning permission. Great importance is attached to the timely handling of planning applications. In general, where there are no controversial issues there should be no difficulty in reaching a decision within the specified period of eight weeks. However mineral development proposals often present controversial and sensitive issues and it must be expected that a good deal of investigation will need to precede a decision; nevertheless every effort should be made to ensure that the decision is not unduly delayed.

31. Decisions should be postponed only when absolutely essential. Applicants can help avoid delays by ensuring that:

- Applications are correctly made out.
- The correct fee is sent with the application.
- The notification procedures are followed and the correct certificates accompany the application.
- The application fully describes the proposed development.
- Requests for further information from the planning authority are responded to promptly.

All parties in the planning process should recognise that promptness, relevance and efficiency are characteristics of good planning and that pre-application consultations will help produce an early decision.

Registration of Planning Applications

32. Article 25 of the GDPO requires local planning authorities to maintain a register of all planning applications made in respect of land in their area. Particulars of any decision given by them or by the Secretaries of State must also be recorded and an index must be provided. Where there is a conditional grant of permission, the conditions should also be recorded in the register of local land charges, in view of the possible need to enforce them against any subsequent owner of the land.

33. Article 25 (8) provides that the index must include a separate minerals subject index for applications for minerals development. It is also advisable, for administrative purposes, for county planning authorities to maintain a register of mineral applications, decisions and the conditions imposed on any conditional grant of permission.

Commons

34. Where minerals are to be extracted from common land the operator should consider whether the agreement of any owners of rights of common over the land is needed. Section 193 of the Law of Property Act 1925, as amended by section 189(4) of Schedule 30 to the Local Government Act 1972, grants public rights over metropolitan commons, manorial waste or urban commons and

provides that this shall be without prejudice to the right of any person to get and remove minerals or to let down the surface of the manorial waste or common. Section 194 of the 1925 Act provides that the erection of any building or fence, or the construction of any other work which prevents or impedes access to land, which was subject to rights of common on 1 January 1926, requires the consent of the Secretary of State, but any development ancillary to the winning or working of minerals is exempted from this requirement under the provisions of subsection 4. There are further provisions for the protection of various types of common.

35. Greens are subject to a separate legal code. Any enclosure or encroachment on to a town or village green or recreation ground, when this is made other than with a view to its better enjoyment, can, under section 29 of the Commons Act 1876, be deemed to be a public nuisance and can be proceeded against upon the information of an inhabitant of the parish. Some commons are managed under statutory schemes of regulation such as schemes made under the Metropolitan Commons Acts 1866-1898 or the Commons Act 1876 and 1899 and restrictions on mineral working may be involved. Commons held by the National Trust are also protected against encroachment by special arrangements.

Rights of Way

36. Separate consent is needed when a right of way is temporarily stopped up or diverted to allow for mineral working. Section 261 (1) &(2) of the Town and Country Planning Act 1990 contains specific powers for the temporary stopping up or diversion of rights of way (such as a footpath or bridleway or highway) to enable the surface working of minerals, in addition to other powers in the 1990 Act (see s 257) for changing the rights of way network.

Planning Decisions: Consultations

37. Planning authorities are required to determine planning applications within eight weeks from receipt of a valid application. Authorities should draw this to the attention of consultees when their views are being sought and should impress upon them the need to respond promptly. All consultees, whether statutory or voluntary, have a role to play and should do all they can to assist in speedy consultations. Before reaching a decision on a planning application it is necessary for the MPA to notify or consult other interested parties and to take their views into account. The GDPO requires local planning authorities to consult with various interested bodies and allow them an opportunity to comment on applications for specified types of development before permission can be granted. Those to be consulted are set out in articles 10-13 of the Order.

38. Article 10 of the GDPO requires a local planning authority to carry out consultations with certain bodies before granting planning permission for certain categories of development. These are set out in the table in Article 10. Applicants are advised to carry out consultations with the specified persons or authorities where their proposed development is likely to require statutory consultation *before* submitting a planning application to the MPA.

39. In the case of consultations under article 11 (consultation with county planning authority) and article 12 (application relating to county matters), the consulting authority must allow a period of *at least* 14 days from the date of receipt of the application by the authority being consulted. Responses to consultation should be made as expeditiously as possible, but longer periods may be agreed for a particular class - eg. in areas where surface development may sterilise mineral deposits or in particularly complex and controversial minerals cases.

Planning permissions: Principles and Conditions

40. Planning permission may be granted with or without conditions, although it will be very unusual for a minerals permission not to have some planning conditions attached to it. The following paragraphs explain the main issues to be considered. The MPA will need a detailed understanding of the applicant's intended methods and programme of working. The MPA should therefore discuss with the applicant the terms under which it is proposed to grant permission so as to make sure that both understand the implications of the terms and consider them practicable. This will often obviate an appeal to the Secretary of State. The Planning Officers' Society have published a 'Good Practice Guide for Mineral Planning Conditions' (November 1995).

Definition of permission area

41. It is important that there should be no chance of ambiguity or confusion about the area for which permission is granted. If the area cannot be readily and accurately defined by reference to the application itself, by road boundaries or by Ordnance Survey plot numbers, a plan at an adequate scale (normally 1/10,000 or 1/2,500) should always be attached showing the precise land in respect of which permission is granted and suitably endorsed to show that it is the plan referred to in the permission. The permission would be granted in some such terms as:

Permission is granted for the winning and working of minerals (specifying which minerals) by surface (underground) working in the area shown ... on the accompanying plan (subject to the following conditions)...

42. Where it is desired to restrict the area of working this can best be achieved by negotiating a formal amendment to the application. Alternatively, a condition can be imposed to restrict the working area so long as it does not make the development permitted substantially different from that comprised in the application. The main criterion is whether the development is so changed that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation (see *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] J.P.L. 37).

Imposition of planning conditions

43. The imposition of conditions on a planning permission can enable many development proposals to proceed where it would otherwise be necessary to refuse permission. With regard to minerals development, conditions serve the additional purpose of securing the environmental acceptability of proposals during and after the period of extraction. The sensitive use of conditions can improve the quality of development control and enhance public confidence in the planning system. Conditions should be used in a way which is clearly seen to be fair, reasonable and practicable. General advice on the use of conditions is given in PPG1 and DOE Circular 11/95 .

44. In applying the principles of planning conditions to minerals development, the topography and the geological structure of the site, the method of excavation and reclamation and the buildings and equipment to be used are among the important factors to be considered. Conditions should reflect a programme of working designed to accommodate the operator's needs while at the same time minimising the effect on the environment both during and at the end of the development.

45. Although all mineral permissions are subject to periodic review under the provisions of section 96 of, and Schedule 14 to, the *Environment Act 1995* (see MPG14 '*Environment Act 1995: Review of Mineral Planning Permissions*' (September 1995)), conditions should be soundly conceived on a long-term basis. MPAs will need to assess the likely impact of the mineral working and to establish

from the outset what is required so that all parties have a clear picture of how the conditions will apply throughout the life of the development and in relation to the after use of the land.

46. Conditions should deal with points of major importance, including issues which are likely to arise during the lifetime of the permission. However, conditions should avoid imposing a multitude of minor obligations to cover every conceivable contingency. The obligations or limitations on a developer must be confined to those which are related to land use.

47. Conditions may only be imposed within the powers available. The principal powers are in sections 70 and 72 of and Schedule 5 to the 1990 Act. Section 70 (1)(a) empowers a local planning authority to qualify a grant of planning permission by conditions. Section 72 (1) amplifies the general power in section 70 (1) (a) in two ways. Section 72 (1) (a) makes it possible to impose conditions affecting land under the control of the applicant, whether or not that land is included in his application. Conditions imposed under this provision may regulate the development or use of that land or may provide for the carrying out of works on it - for example to provide screening, to provide a means of access or to accommodate plant-but only 'so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission'. This limitation is important: the authority must be satisfied that there is a clear connection between the object of their conditions and the development to be permitted. Such conditions should not be imposed merely on the ground that the works they require may be desirable for general planning reasons and the land in question happens to be in the applicant's control.

48. Section 72 (1) (b) enables conditions to be imposed requiring the removal of any buildings or works or the discontinuance of any use of land for which permission is granted at the end of a specified period, and for the reinstatement of the land at the end of that period. The 1995 Minerals Regulations provide that in this context the winning and working of minerals is a use of land (see Annex A).

49. The requirements for the reinstatement of land following minerals development should be framed with the possible future use of the restored land in mind, although the conditions cannot validly regulate that use if it is one for which planning permission will subsequently be required. Schedule 5 provides that planning permissions for minerals development must be subject to a condition limiting the duration of the development and enables the imposition of aftercare conditions. Advice on restoration and aftercare is given in MPG7 .

50. Particular attention must be paid to the wording of conditions; they must be expressed precisely to avoid ambiguity and any possible misinterpretation. As a condition is binding on the land, and hence successive owners, it is important that the mineral operator and those with an interest in the land should know exactly what their obligations are. Moreover, a condition that is framed in ambiguous terms will be difficult, if not impossible, to enforce. Where a condition refers to particular areas of land, these should be precisely defined, preferably by reference to a plan, in order to avoid later dispute.

Permission subject to further approval

51. In some circumstances the MPA may be prepared to grant permission before a final decision is made on certain points of detail such as, for example, methods of screening workings. Where this is so and the mineral operator can begin work to take such preliminary steps as ordering plant or equipment without a final decision on these points, conditions may be imposed requiring such details to be submitted subsequently for the approval of the authority.

52. MPAs should bear in mind that once permission has been granted for the working of minerals over a specified area it will only be open to them to influence that development in so far as it relates to matters reserved for later approval, except as provided for in periodic reviews under Schedule 14 to the Environment Act 1995 (see MPG14 'Environment Act 1995: Review of Mineral Planning Permissions'(September 1995)) or, in exceptional circumstances, the use of revocation, modification, or discontinuance orders, advice on which is given in MPG4. However, the requirement for periodic reviews does not remove the importance of drafting the terms of the permission carefully at the outset.

53. A planning permission should not be made subject to a condition requiring the further consent of some other person or body. However, conditions can require relevant matters to be agreed with the MPA who can in turn liaise with third parties.

54. Where some public authority or Ministry are affected but have no statutory powers of control over the matters in question, their views should normally have been obtained and taken into consideration in deciding the terms of the permission. But it may be necessary to leave points of detail to be settled after consultation with that other authority.

55. Planning permission is not a substitute for any consent required under other statutory powers of control. A condition requiring the landowner's consent should not be imposed.

Matters covered by other statutes or the common law

56. The general power to impose conditions in section 70 of the 1990 Act is not expressly qualified, but the Act itself is concerned primarily with the development and use of land, and conditions which are not strictly relevant to this purpose should not be imposed. Where it appears that the control of certain matters is not adequately provided for in other legislation, or that the application of such legislation is less convenient or less certain than the use of planning powers, the test is whether the matter is essentially one of land use. If it is not, conditions should not be imposed. A condition which duplicates the effect of other enforceable controls will be unnecessary, and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable.

57. In some circumstances good planning considerations may justify imposing conditions dealing with aspects which are at least touched on by other statutes or common law. For example, although the Mines and Quarries (Tips) Act 1969 is designed to secure the stability of mineral waste tips, it is possible that the location of a proposed tip would present such clear risks to the public that restrictions should be imposed on the planning permission or even that permission should be refused. MPAs should not decline to exercise planning powers solely on the ground that other powers are available where those powers do not adequately address wider planning issues which need to be dealt with. Also the imposition of planning conditions can be a preventive measure designed to ensure that any undesirable effect of development is mitigated or forestalled, whereas alternative legislation will often be corrective, with action possible only after the event.

Enforceability

58. In imposing conditions particular attention should be paid to the possibility of enforcement. This makes it necessary to consider:

- a. the ease of detecting the breach of a particular condition;
- b. whether, in the event of a breach of the conditions, enforcement action will be practicable, bearing in mind that it may involve the mineral planning authority in taking steps

themselves to secure compliance with the conditions and to recover the cost from the owners of the land.

Generally, if a condition can only be worded in a positive form it is likely to be difficult to enforce unless some specific act is required as part of the initial development, such as the provision of an adequate access or fencing. Even in these circumstances such a condition is best framed in a negative way by a provision that the working of the site is not commenced until after the required act has been carried out. Further advice on enforcement powers is contained in PPG18 .

Monetary consideration, agreements and covenants

59. It is a general rule of law in connection with the grant of permissions or licences that no payment of money or other consideration be demanded from any person except on a clear and distinct authority laid down by statute. A condition requiring an applicant to pay or to deposit money as security for compliance with conditions is thus *ultra vires*. Moreover, a local planning authority may not seek extra-statutory rights and remedies by the expedient of requiring an operator to enter into an agreement to observe certain obligations as a condition of granting permission. However, obligations (which may include obligations to pay money) may be made under the provisions of section 106 of the 1990 Act, as substituted by section 12(1) of the Planning and Compensation Act 1991 (see DOE Circular 1/97). Such obligations may be particularly relevant to certain mineral workings (see for example DOE Circular 25/85 and MPG7).

Types of condition

60. Annex C outlines the circumstances in which various conditions may be imposed. Though intended as a guide to the kind of problems which commonly arise it is by no means exhaustive, either of the types of condition, or of the considerations which may lead to the use of particular conditions. Helpful advice is given in the Department's research report 'Environmental Effects of Surface Mineral Working'[Roy Waller Associates Ltd, October 1991-HMSO ISBN 0-11-752637-1 £16], in the Planning Officers' Society's 'Good Practice Guide for Mineral Planning Conditions'(November 1995) and in subsequent research reports - see bibliography in Annex D.

Annex A: the Town and Country Planning (Minerals) Regulations 1995

A1. *The Town and Country Planning (Minerals) Regulations 1995* [SI 1995 No 2863](the '1995 Regulations') modify certain provisions of the Town and Country Planning Act 1990 (the '1990 Act') as they apply to development consisting of the winning and working of minerals or involving the depositing of minerals waste. The Regulations do not apply to the winning and working of minerals on agricultural land for the purposes of agricultural use because they are precluded from doing so by section 315 of the 1990 Act.

A2. Section 336(1) of the 1990 Act provides the general position that 'use', in relation to land, does not include the use of land for the carrying out of any building or other operations on it. Regulation 2(1) modifies the general rule so that development consisting of the winning and working of minerals is a 'use' in relation to the discontinuance of a use of land for the purposes of the provisions specified in Parts I and II of Schedule 16 to the 1990 Act. This is necessary to ensure consistency with the powers to make orders requiring the discontinuance of mineral working in paragraph 1 of Schedule 9 to the 1990 Act. Regulation 2(2) provides that for all other purposes of those provisions 'use' *does not* include the use of land for development consisting of the winning and working of minerals. This is necessary to ensure that mineral development being carried out without the benefit of planning permission cannot obtain established use rights.

A3. Regulation 3 and the Schedule to the 1995 Regulations modify specific provisions of the 1990 Act. Paragraph 1 of the Schedule modifies section 56 (time when development begun). The effect of the modification is that for the purposes of sections 91, 92 and 94 development consisting of the winning and working of minerals is taken to be begun on the earliest date on which the winning and working of minerals to which the planning permission relates begins. Section 91 provides that every planning permission granted or deemed to be granted shall be subject to the condition that the development to which it relates must be begun not later than 5 years from the date of the grant of the planning permission or such longer or shorter period as the planning authority may in a particular case direct. If development has not been begun within the specified period the planning permission lapses. Section 92 makes similar provision with respect to outline planning permissions. Section 94 enables a planning authority to serve 'a completion notice' where development has been begun within the specified period but has not been completed.

A4. This modification is necessary to ensure that preparatory works are not to be regarded as commencing development for the purposes of sections 91, 92 and 94. Otherwise fairly minor works would be sufficient to exempt the development from the 5 year rule with the risk that a site could be left unworked indefinitely since a prohibition order can only be made where 'development consisting of the winning and working of minerals has occurred ...'(paragraph 3(1)(a) of Schedule 9 to the 1990 Act).

A5. In some cases it may be necessary, or indeed a requirement of the planning permission, to carry out substantial preparatory works before the actual winning and working of minerals begins. Where this is likely to take longer than 5 years, MPAs should specify an appropriate longer period under section 91(1)(b) of the 1990 Act. In cases where preparatory works are unlikely to be completed before the specified period for the beginning of development under section 91, it is open to the owner or operator to apply to the MPA for the condition to be varied under section 73 of the 1990 Act. MPAs should consider such applications reasonably having regard to the provisions of the development plan and to any other material considerations.

A6. The modification of section 56 is for the purposes of sections 91, 92 and 94 only. Enforcement action can only be taken where a 'breach of planning control' occurs. This is defined in section 171A of the 1990 Act (as inserted by section 4 of the Planning and Compensation Act 1991) as:

- a. carrying out development without the required planning permission; or
- b. failing to comply with any condition or limitation subject to which planning permission has been granted.

A7. In short the effect is:

- if neither preliminary works nor winning and working has commenced-the development has not been begun and there is no development which the MPA could make the subject of enforcement action, but the 5 year period runs from the date of grant of the permission and if winning and working is not started within that period the permission lapses.
- If preliminary works have commenced but winning and working has not--the MPA can take enforcement action against any breach of the conditions relating to the preliminary works, but cannot require the preliminary works themselves to be carried out. The 5 year period runs from the date of grant of the permission and if the winning and working is not started within that period the permission lapses.
- If winning and working has commenced within the 5 year period but conditions precedent have not been complied with-the winning and working could be regarded as being carried out in breach of planning permission (as opposed to breach of condition).

A8. The time limits for enforcement action in respect of a breach of planning control are set out in section 171B of the 1990 Act (as inserted by section 4 of the 1991 Act). Paragraph 9 of the Annex to DOE Circular 17/92 gives detailed advice on these.

A9. Section 107 of the 1990 Act (compensation where planning permission revoked or modified) provides that where planning permission is revoked or modified compensation may be claimed by any person with an interest in the land or minerals for any loss or damage sustained which is directly attributable to the revocation or modification. Such loss or damage would include loss or expenditure in connection with buildings, plant or machinery. However, in the case of mineral development, it may be possible for the developer to put buildings, plant or machinery to another use. Paragraph 2 of the Schedule to the 1995 Regulations therefore modifies section 107 to provide that in calculating the compensation payable following an order revoking or modifying planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste, no amount shall be allowed for loss in respect of buildings, plant or machinery unless the claimant can prove that he is unable to use them or can only use them at a loss. Where a claim includes a claim for expenditure or loss in respect of buildings etc, the Lands Tribunal may direct that part of the claim may be severed from the remainder of the claim and be dealt with at a later date.

Annex B: Permitted Development

B1. Parts 19 to 23 of Schedule 2 to the GPDO grant general permissions for certain types of mineral development.

Part 19 Development ancillary to mining operations

B2. Part 19 of Schedule 2 to the GPDO contains three permissions for ancillary surface development. These permissions are ancillary to the mining of 'minerals', but are not available to the Coal Authority (CA) or coal operators licensed by the CA.

B3. Class A provides a permission for a limited range of development which may be carried out *without* the prior approval of the MPA. The development may only be carried out on land used as a mine and development at underground mines is restricted to the 'approved site'(see para 7). Development under Class A must be for purposes principally in connection with the winning and working of minerals brought to the surface at the mine or for the treatment, storage or removal of such minerals or waste derived from them. These processes may need to involve some material brought into the mine from elsewhere and while this is acceptable provided that the materials treated are primarily from the host mine, development for secondary industry is not permitted. There are a number of other limitations on the development permitted under this Class: these are listed in paragraph A1(c) to (g) and include constraints on height and floor space.

B4. Class B grants permission for a wider range of development, including secondary industry, subject to the prior approval of the MPA. This permission may not be exercised unless the developer has first submitted to the MPA detailed proposals covering the siting, design and external appearance of the proposed development and obtained their written approval of the proposal. Because the prior approval of the MPA is required for development under this class, there are fewer restrictions on the development which may be carried out and the permission extends to development in connection with the preparation for sale, consumption or utilisation of minerals brought to the surface of the mine as well as their treatment, storage or removal. The development permitted by this class may only be carried out on land used as a mine or on 'ancillary mining land' which is defined as 'land adjacent to and occupied together with a mine at which the winning and working of minerals is carried out in pursuance of planning permission granted or deemed to be granted under Part III of the Act'. At underground mines development is again confined to the approved site.

B5. MPAs may only refuse to approve development proposed under this Class, or attach conditions to an approval, on the grounds specified in paragraph B2 of Class B which are that:

- the proposed development would injure the amenity of the neighbourhood and modifications can reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury; or
- the proposed development ought to be, and could reasonably be, sited elsewhere.

MPAs will wish to satisfy themselves that any refusal would be unlikely to seriously prejudice the operation of the mine. If neither of the grounds specified is appropriate but the authority nevertheless believe that the development should not proceed, it is open to them to withdraw the permission under Article 4 of the GDPO (see paras 44-47).

B6. The permissions granted by Classes A and B are both subject to a condition that the development so permitted should be removed within 24 months of the end of mining operations

and that the land should be restored to its condition before the development took place. The condition may be varied with the written agreement of the mineral planning authority where, for example, a longer restoration period is required or where development could usefully be retained and would be environmentally acceptable.

B7. At an underground mine (which is defined as 'a mine at which minerals are being worked principally by underground methods') development is only permitted under Classes A and B on an approved site as defined in paragraph D1. In the case of existing mines that were in operation on 5 December 1988 the approved site consists of land immediately adjoining an active access, which was in use for the purposes of the mine or specified associated activities on that date provided that a plan of that land was deposited with the MPA before 5 June 1989. In any other case, the approved site is the area of land identified for permitted surface development in a specific grant of planning permission.

B8. Class C grants permission for development for the maintenance or safety of a mine or for ensuring the safety of the surface of land at or adjacent to a mine. This applies to disused mines as well as to active ones. There is no restriction on the permitted site for such works. Development may be carried out without the prior approval of the MPA in the circumstances described in C2(1). Other development will require the authority's prior approval.

Part 20 Permitted development rights for coal mining development

B9. Class A in Part 20 of Schedule 2 grants permission for development by a licensee of the CA, in a mine started before 1 July 1948, consisting of-

- a. the winning and working underground of coal or coal-related minerals in a designated seam area; or
- b. the carrying out of development underground which is required in order to gain access to and work coal or coal-related minerals in a designated seam area.

Designated seam area is defined by reference to a seam plan which was deposited with the MPA before 30 September 1993. If no such plan was deposited with the MPA before that date, there is no designated seam area and therefore no permission under Class A. Permitted development rights under Part 20 Class A only apply within the seams shown on deposited plans and to underground development for the purpose of accessing coal and coal related minerals within those-eg. cross measure drifts and roadways. As the permission relates to the working of underground seams there is nothing to prevent overlapping working from different collieries nor to prevent coal allocated to one colliery being worked from another colliery. However, any winning and working outside designated seam areas requires a grant of planning permission from the MPA.

B10. The permission granted by Class A is subject to conditions requiring the reinstatement, restoration and aftercare of any land which is an authorised site used at any time in connection with any previous coal-mining operations at that mine. An authorised site is defined in paragraph F.2.

B11. Paragraph A.1 of Class A provides that, except where there is an approved restoration scheme or mining operations have permanently ceased, the developer must apply to the MPA for approval of a scheme making provision for the reinstatement, restoration and/or aftercare of the land. The application must have been made before 31 December 1995 (or such later date as the MPA may have agreed in writing). If the MPA fail to give notice of their decision within 8 weeks (or such longer date as may be agreed in writing with the applicant), or if they refuse the scheme or approve it subject to conditions, the applicant may appeal to the Secretary of State. Once a restoration

scheme has been approved restoration and aftercare must be carried out in accordance with the approved scheme or as subsequently varied with the MPA's written approval.

B12. Where there is no approved restoration scheme paragraph A.1(a)(iv) provides that-

- i) all buildings, plant, machinery, structures or erections used at any time for or in connection with any previous coal-mining operations at that mine shall be removed from the land which is an authorised site unless the MPA have otherwise agreed in writing; and,
- ii) the land shall, so far as practicable, be restored to its condition before any previous coal-mining operations at that mine took place or to such condition as may have been agreed in writing between the MPA and the developer.

B13. Restoration must be carried out within 24 months of mining operations having permanently ceased or, if an application for approval of a restoration scheme has been made before the date when mining operations have permanently ceased, within 24 months of the date when the application has been finally determined as refused, whichever is the later. In either case, the MPA may agree a longer period in writing. Where an application is finally determined as approved, restoration must be carried out in accordance with the approved scheme and within the timescales set out in the approved scheme (see paragraph 20).

B14. The restoration conditions attached to Class A relate only to land which is an authorised site used at any time in connection with any previous coal-mining operations. 'Previous coal-mining operations' has the same meaning as in section 54(3) of the Coal Industry Act 1994 that is:

- a) any coal-mining operations carried on by any person before 1 July 1948; or
- b) any coal-mining operations which-
 - i) were carried on by any person at any time on or after that date but before 31 October 1994; and
 - ii) were operations constituting development for which planning permission was granted by a development order or any corresponding order made, or having effect as if made, under any enactment then in force;

and references in Class A to the use of anything in connection with any such operations includes references to its use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations.

Content and timing of restoration schemes

B15. The restoration conditions attached to the Class A permission cannot require development to be carried out which requires a specific planning consent. Where a site is appropriate for re-development to a hard end use, operators will need to obtain the relevant planning consents from the local planning authority. Restoration schemes to be submitted under the requirements of the GPDO permission should be aimed at restoring the site to a 'soft' end use to achieve environmental improvement. In this context, a 'soft' end use is one which involves vegetation covering the majority of the restored surface with minimal associated hard development. Examples include agriculture, forestry, sport and recreation (though not large indoor facilities), public open space, wildlife habitats (including the water environment) and other uses aimed at environmental improvement. Separate planning permission would be needed if the use involved development of the land. When preparing and considering restoration schemes, regard should be had to the advice in MPG7 ('The Reclamation of Mineral Workings') and should take account of the desirability of recording or preserving any historic buildings or archaeological sites which may be affected (including those associated with the coal industry itself).

B16. Restoration schemes should themselves set out the time when restoration is to commence and the timescales over which restoration and aftercare will take place. If an approved restoration scheme does not specify the periods within which reinstatement, restoration or aftercare should be carried out, paragraph A.1(a)(iii) provides that the scheme is deemed to include conditions that reinstatement or restoration shall be carried out within 24 months of mining operations having permanently ceased (or within 24 months of the date of final determination of the application for approval of the scheme, whichever is later); and aftercare in respect of any part of the site shall be carried out for 5 years from the date of completion of restoration of that part of the site (or from the date of final determination of the application for approval of the scheme, whichever is later).

B17. The appropriate level of detail and precision to be included in the restoration scheme will vary according to the circumstances of the particular case. The developer should provide full details where he expects mining operations to cease within 5 years. For sites where mining operations are likely to continue for a longer period restoration schemes should set out the intended after-use(s) and the principles of restoration and aftercare to achieve that after-use, but provide for detailed proposals for final landform/contours of the site, restoration and aftercare to be submitted for agreement with the MPA at a later date or dates.

B18. Development carried out on land comprised in an authorised site on or after 5 December 1988 under Classes B and C of Part 20 of Schedule 2 to the 1988 General Development Order, is already subject to a restoration condition similar to that set out in paragraph 12 above. Similarly, where the depositing of colliery spoil has been carried out under the permitted development rights granted by Part 21 of Schedule 2 to the 1988 GDO, or under the benefit of a specific planning permission, the deposit may be subject to conditions requiring restoration and aftercare of the site. Developers and MPAs should adopt a comprehensive approach to the restoration and aftercare of sites to ensure that the requirements for restoration and aftercare under the various schemes or conditions are compatible.

B19. Where redevelopment of the whole or part of the site to a 'hard' or 'mixed' end use would be more appropriate than restoration to a soft end use, developers will need to obtain any necessary planning permission from the local planning authority. However, in order to ensure that sites are not left un-restored because planning permission is refused or is left un-implemented, the restoration requirements in Class A continue to apply up to and until a planning permission has been granted and implemented. In this connection, paragraph A.1(b) provides that the restoration conditions attached to the Class A permission do not apply in relation to land in respect of which there is an implemented extant planning permission granted on an application under Part III of the Town and Country Planning Act 1990. Developers should consult the local planning authorities, and others with an interest in the land at an early stage on appropriate end uses for the site and on their proposals for restoration and aftercare where relevant.

Underground coal-mining development by licensees of British Coal

B20. Class B of Part 20 granted a transitional permission to licensees of the British Coal Corporation (BCQ for underground development, in a mine started before 1 July 1948. Responsibility for these licences has now been taken over by the Coal Authority (CA).

B21. This permission was not subject to the restoration conditions attached to Class A. However, in respect of mines operating under licences which were granted by BCC after March 1993 (under section 36 of the Coal Industry Nationalisation Act 1946) and mines where there was an outstanding commitment by BCC to restore the site, the principles of the Agreement reached between BCC and the Department of the Environment in 1990 relating to the restoration of colliery sites apply. The terms of that agreement were set out in Mr Moynihan's announcement of 5 April

1990 (Hansard Col 781/2). In so far as any of that land is within the control of the CA, these principles will be implemented by the Authority. The CA will also apply the principles of the agreement to any other land within their control where that land is a mine operating under permitted development rights which closes with no obligation on the operator to restore the site.

Other coal-mining development by the coal authority and licensed operators

B22. Class C of Part 20 grants permission for any development required for the purposes of a mine which is carried out on an authorised site at that mine by a licensed operator, in connection with coal mining operations, subject to certain limitations set out in C.1. The permission is subject to conditions set out in C.2 requiring restoration of the land.

B23. Class D grants permission for a wider range of surface development in connection with coal mining operations subject to the prior approval of the MPA. The permission is similarly subject to conditions set out in D.2 requiring restoration of the land.

B24. These Classes generally mirror the provisions of Classes A and B of Part 19 (see paras 3-7). For example, GPDO rights are available for ancillary development at active mines and development will only be allowed in so far as it is required for the purpose of the mine at which it takes place. If development would materially affect the external appearance of a mine or would be above a certain size, the mineral planning authority's approval is required in respect of siting and design. An additional restriction prevents the carrying out of development for the purpose of creating a new surface access to underground workings or for improving an existing access to the point where it becomes active.

B25. Development under Classes C and D may only be carried out on an 'authorised site' as defined in paragraph F2. In the case of mines operating under permitted development rights on 5 December 1988, the authorised site consists of land immediately adjoining an active access which was in use for the purposes of the mine in connection with coal mining operations on that date, provided that a plan of that land was deposited with the MPA before 5 June 1989. Land used for the permanent deposit of waste, and land covered by those parts of any railways, conveyors, aerial ropeways, road-ways, overhead power lines or pipelines which is not adjoining by other land in use for the purposes of the mine, was excluded from the authorised site. In any other case the authorised site is the area of land for permitted surface development identified in a specific grant of planning permission.

B26. Class E grants permission to the Coal Authority and licensed operators for development to enable maintenance and safety works to be carried out at an active or disused mine. Its provisions are the same as those contained in Class C of Part 19 (see para 8).

Part 21 Waste tipping

B27. Part 21 of Schedule 2 grants permission for mineral operators to deposit waste derived from their operations on land already lawfully used for that purpose. The permission to tip is confined to premises used as a mine or on ancillary mining land already used for tipping. Only waste derived from the winning and working of minerals brought to the surface at the mine and waste derived from the treatment or preparation for sale, consumption or utilization of minerals from that mine may be deposited under this Class.

B28. Paragraph A1 imposes certain limits on the height and superficial area of permitted deposits: waste deposited in an excavation must not exceed the level of the adjoining land and in any other case the superficial area or height of the deposit as at 21 October 1988 must not be increased by

more than 10%. These limits may only be exceeded if an increase is provided for in a scheme approved by the mineral planning authority in accordance with paragraph A2. This enables an authority to require the developer to submit a waste management scheme making provisions for the manner in which waste is to be deposited, the preliminary stripping and Storage of subsoil and topsoil and, the restoration and aftercare of the site. Where a scheme has been agreed any future tipping and all other activities in relation to the deposit must be carried out in accordance with that scheme. Those aspects of a scheme relating to the manner of depositing waste and, where appropriate, the stripping and storage of soils, can apply only to waste deposited from the date on which the scheme is approved, but those aspects of a scheme which cover restoration and aftercare may apply to waste deposited since 5 December 1988. Class B grants permission for the deposit of waste resulting from coal mining operations on land used for that purpose on 1 July 1948 provided it is in accordance with a relevant scheme approved by the MPA before 5 December 1988. A relevant scheme is defined in paragraph C. Where a waste management scheme or relevant scheme has been approved by the MPA it may not be altered or reviewed by means of a further requirement under Part 2.

Part 22 Mineral exploration

B29. Part 22 of Schedule 2 provides two permissions to allow the carrying out of certain small scale and temporary exploratory operations undertaken for the purpose of exploiting minerals. The operations permitted are the drilling of boreholes (except for oil or gas exploration), the making of other excavations, the carrying out of seismic surveys, and certain related ancillary development.

B30. Class A of Part 22 permits exploratory drilling, excavations, seismic surveys and related ancillary development for a period of 28 days. These development rights are subject to certain specific limitations and conditions including: a ban on operations in a National Park, AONB, SSSI, The Broads or within 50m of an occupied house, hospital or school; a 12m limitation on the height of equipment (reduced to 3m within 3km of an aerodrome); and, a ban on night working. The permission can be withdrawn by means of an Article 4 Direction which is subject to confirmation by the Secretary of State.

B31. Class B permits the same operations to be carried out for the longer period of 6 months (or such longer period as the MPA have otherwise agreed in writing) under less restrictive limitations and conditions (eg there is no ban on operations in National Parks, AONBs etc, although the 12m limitation on height remains) provided that the developer has given the relevant MPA 28 days prior written notification of the intended development. Within 21 days of receiving the notification, the MPA may make an Article 7 direction withdrawing the permission from all or part of the development. An Article 7 direction may only be made in limited circumstances set out in paragraph 2 of Article 7 (see paragraph B46 below). The authority are required to send the Secretary of State a copy of the direction as soon as it is made and who may disallow it within 28 days of the date it is made. If the Secretary of State does not disallow it, the direction comes into force on the 29th day.

B32. The permission under Class B is indefinitely renewable in respect of the same land by the service of further notice on the MPA. This means, for example, that a developer can carry out an extended programme of exploration in relation to an area of land, provided that the appropriate 28 days notice is served on the MPA in advance of each phase of operations and the permission is not withdrawn by use of an Article 7 Direction.

B33. This will provide mineral operators with the flexibility needed to adjust their exploration programme to the size and complexity of the prospect, whilst providing MPAs with regular information on the scale and nature of proposed activities and the opportunity to withdraw the

rights to carry out further notified work on a particular site, if it is likely to cause demonstrable harm to interests of acknowledged importance.

B34. The exploration permission may only be exercised in accordance with the details specified in the written notice given to the MPA unless the authority agrees otherwise in writing. For example, if a developer's notification does not specify the intended hours of working the authority may wish to agree an appropriate variation to the notification rather than make an Article 7 Direction.

Trees

B35. No trees must be removed, felled, lopped or topped or other thing done to harm or damage trees unless specified in detail in the written notification or otherwise agreed by the MPA in writing. The level of detail appropriate to notifications in relation to works affecting trees will vary according to the circumstances of the case and the types of operations proposed. Where trees are to be felled, or a programme of cutting back is intended, the notification should clearly indicate the area of working and, in as much detail as possible, the number of trees etc affected and their location-in densely wooded areas, it may be appropriate to indicate the ratio of trees to be lopped or felled. However, where minor works are involved, it is not necessary for notifications to specify every single tree or shrub that may be affected. In such cases, it would be sufficient to give a clear indication of the area of working and information on the likely incidence of lopping or pruning.

Restoration

B36. Within 28 days of the exploratory operations ceasing, the land must be restored as far as practicable to its former state unless otherwise agreed by the MPA in writing. Whilst it is usually desirable in planning terms for the land to be restored to its former condition, in deciding what restoration conditions are appropriate in any particular case, MPAs will wish to take account of the preferences of landowners and any contractual and other obligations on the operator, provided that these do not conflict with land use planning principles.

B37. In addition to the permitted development rights granted by the GPDO, section 324 of the 1990 Act gives local planning authorities or the Secretary of State the power to authorise entry on land to carry out surveys in connection with, amongst other things, development plan work, planning applications, the service of notices or orders, and valuations in relation to compensation claims. The section expressly confers power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein. Before searching or boring is carried out 24 hours notice must be given to the occupier of the land concerned. If the land is held by statutory undertakers and they object to the proposal on the grounds that it would be seriously detrimental to the carrying on of their undertaking, it cannot be pursued except with the authority of the appropriate Minister as defined in section 265. Where searching or boring is necessary to prove the extent and quality of mineral deposits which a particular mineral operator wishes to work, it may be possible for the operator himself to act as agent for the local planning authority. However, the power under Section 324 to authorise persons to enter upon land for this purpose can be exercised by the local planning authority or by the Secretary of State only in relation to their functions under the 1990 Act.

Part 23 Removal of material from mineral-working deposits

B38. Part 23 of Schedule 2 to the GPDO grants permissions for the removal of material from bona fide stockpiles and from certain small or temporary mineral-working deposits. Class A contains an unconditional permission for the removal of material from any bona fide stockpile. A stockpile is

defined as 'a mineral-working deposit consisting primarily of minerals which have been deposited for the purposes of their processing or sale'.

B39. Class B grants permission for the removal of material from other small or temporary mineral-working deposits provided that 28 days prior written notification has been given to the MPA. Small or temporary mineral-working deposits are those covering a ground area not exceeding 2 hectares or those containing no material deposited on the land more than 5 years before the date of removal. The permission does not authorise the removal of material from any deposit derived from operations permitted by Part 6 of Schedule 2 (which provides permitted development rights for agricultural buildings and operations).

B40. When notifying the MPA of their intentions operators must specify:

- a. the nature of the proposed development;
- b. the exact location of the deposit;
- c. the proposed means of vehicular access to the site; and
- d. the earliest date at which any material contained in the deposit was placed on the land.

The development must be carried out in accordance with the details given in the operator's notification unless the MPA agree otherwise in writing. It is recommended that the notification is accompanied by a plan sufficiently detailed to indicate the site properly and that the developer provides detailed information as to the methods of operation to be employed, the proposed hours of working, the anticipated duration of the operations, the proposed access and the likely volume and duration of site traffic. Within 21 days of receiving the notification the MPA may make an Article 7 direction to withdraw the permission (see paragraph 46). MPAs may, however, prefer to agree a variation of the details in those cases where such a variation would make the development acceptable.

B41. The permission in Class B is also subject to a condition which empowers the MPA to require the operator to submit for their approval a scheme for the restoration and aftercare of the site. If such a scheme is required it must be submitted to the authority within such period as the authority may specify, provided that it is not less than 3 months from the date on which the requirement was made.

Restriction of permission granted by the GPDO

B42. A permission granted by the GPDO may not be exercised in contravention of any condition attached to a planning permission which specifically refers to its exclusion. For example, the Order permission for the erection of plant may be restricted by a siting condition attached to a permission to win and work minerals. However, in the Secretary of State's view, the freedom given by the Order should not be restricted on the grant of specific planning permission unless there are compelling planning reasons to do so. It is accepted that close control may be needed where the working is in a National Park or other area of comparable natural beauty since in these areas the siting of plant and buildings may be of considerable importance, or in the neighbourhood of an air-field where the height of ancillary development may have safety implications. The form of the restriction will depend entirely on the circumstances and on how much is known of the future needs of the undertaking when the minerals development is being considered. It will sometimes be possible to impose conditions at the outset regulating the type and siting of particular installations or even prohibiting their erection. But when the detailed control of these installations has to be left for consideration later, conditions can be imposed on the planning consent requiring permission to

be applied for in respect of the erection of buildings, plant and machinery notwithstanding the provision of the Order.

B43. Where a proposal, which might be assumed to benefit from a permitted development right, is likely to have a significant effect on a classified Special Protection Area (SPA), or a site which the Government and the European Commission have agreed as a site to be designated as a Special Area of Conservation (SAC), or a designated SAC the developer should seek an opinion from English Nature to ensure that any permission under the GPDO is not in breach of the terms of the Habitats Directive. Annex C of PPG9 (paragraphs C12-C16) explains the process.

B44. In areas such as green belts, where amenity considerations are of great importance, minerals development may be acceptable as a temporary activity, restricted as it is by the expected life of the development. However, industrial-type activity such as the treatment, preparation for sale, consumption or utilisation of minerals should not be excessive or prolonged, and it may be desirable therefore to impose conditions restricting plant and machinery and buildings to use in connection with minerals extracted only from the site.

Withdrawal of permission granted by the GPDO

B45. A permission granted by the GPDO may be withdrawn by a direction either under Article 4 or, in the case of development permitted by Class B of Part 22 or Class B of Part 23, under Article 7. Under Article 4, a local planning authority may, by issuing a direction, remove permitted development rights for any development within the classes and in the particular area specified in the direction. Directions may be either specific to a particular development proposal or may cover wider areas, such as a conservation area. The result of a direction is that planning permission must be sought for the development covered by the direction although normally no application would be necessary. A direction cannot affect development which has already been started when the direction becomes effective.

B46. A MPA making an Article 4 direction must either serve notice on the owners and occupiers of the land involved or, where the area covered is extensive, they may place a notice in a local newspaper. Except where the direction relates to a listed building, directions made under Article 4 must be approved by the Secretary of State. Since permitted development rights have been endorsed by Parliament, they should be withdrawn locally only in exceptional circumstances.

B47. The permissions granted by Class B of Part 22 (mineral exploration) and Class B of Part 23 (removal of material from mineral-working deposits) are only available if the developer gives the responsible mineral planning authority 28 days prior notification of his intentions. In such cases, Article 4 does not apply. Instead an accelerated power of direction is available under Article 7 to enable the mineral planning authority to respond promptly to notification. If an authority wishes to make a direction, they must do so within 21 days of receiving the developer's notification and may only do so, in the specific circumstances set out in paragraph 2 of Article 7. A direction under Article 7 does not require the prior approval of the Secretary of State, but the authority must send him a copy of the direction as soon as it is made and the Secretary of State may disallow it at any time within 28 days of the date on which it is made. If the Secretary of State does not disallow it, the direction comes into force on the 29th day. Since Article 7 directions must be issued within 21 days, and only in certain limited circumstances, the Secretary of State sees no reason why decisions on a developer's notification should not be delegated to officers so that the developer can be advised in good time before the 28 day period elapses.

Compensation

B48. If the GPDO permission for any particular development is withdrawn, either by revocation or amendment of the GPDO or by the issuing of a direction under Articles 4 or 7, an operator may make application for permission in the normal way. If that permission is refused, or granted subject to conditions (other than those previously imposed by the order itself), the applicant may be entitled to claim compensation under section 108 of the 1990 Act.

Annex C: Minerals Planning Conditions

Time limits

(a) Commencement of development

C1. Section 91 of the 1990 Act requires most planning permissions to be subject to a condition that the development must be begun within five years of the date on which the permission is granted or such longer or shorter period as the local planning authority may consider appropriate having regard to the provisions of the development plan and to any other material considerations. If permission is granted without such a condition then it is deemed to be granted subject to a condition that the development must be begun within five years. Section 91(4)(d) of the 1990 Act enables the MPA, in the case of mineral development, to impose an alternative condition that development must be begun within a specified period after the completion of other mineral development which is already being carried out by the applicant for the planning permission.

C2. The 1995 Minerals Regulations provide that development consisting of mining operations shall not be taken as begun until the mining operations themselves are started (see Annex A). Where development is taking place on a new site and a substantial amount of plant and machinery has to be constructed, it may not be practicable for the mining operations to be begun within five years. In these circumstances the operator should suggest that an appropriate period is specified in the permission.

C3. Where an outline planning permission for building in connection with minerals development is granted, Section 92 of the 1990 Act requires a condition to be imposed to the effect that the application for approval of reserved matters must be made within three years of the grant of permission and the development must be started within five years of the grant of permission or within two years of the final approval of the last reserved matters to be approved, whichever is the later date. If the authority consider it appropriate on planning grounds, however, they may use longer or shorter periods than those specified in Section 92 but they must give their reasons for doing so.

(b) Duration of Planning Permission

C4. Part I of Schedule 5 to the 1990 Act requires all planning permissions for mineral working to be subject to a time limit condition, requiring development to cease not later than the expiration of 60 years or such longer or shorter period as the MPA may specify. The period should be appropriate to the particular circumstances of the case and should take account of the legitimate needs of the operator as well as planning considerations. Permissions existing on 22 February 1982, which are not already time-limited, become time-expired on 22 February 2042. Where a permission for mineral working becomes time expired and workable deposits remain an application for its renewal should be considered in the normal way but it is to be expected that such an application would normally be granted unless there has been a material change of planning circumstances since the expiring permission was granted. Because of the long time scale of some mineral operations careful consideration should be given to the nature and long term relevance of the conditions to be attached.

Access and protection of the public highway

(a) Access and road safety considerations

C5. Where the transport of minerals causes a substantial increase in road traffic, or where it creates problems of road safety, conditions may be necessary to restrict traffic to a particular access or to require an access of a particular design which makes it impracticable to enter or leave the site except in a certain direction. Where the existing access is not suitable for the type of transport to be used, conditions may require the removal of obstructions to the field of view or the construction of better splays or improved roadways provided the necessary land is in the control of the applicant or within the application site. These issues should be settled in consultation with the appropriate, highway authority.

C6. Class B of Part 2 of Schedule 2 to the GPDO grants permitted development rights for the formation, laying out and construction of an access to any highway which is not a trunk road or a classified road, where that access is required in connection with any development permitted by Schedule 2. Otherwise planning permission is required for the creation of any new means of access to a highway or where the proposed use of an existing access is held to constitute a material change of use, eg an existing agricultural access is widened to provide access for mineral development. Where planning permission has been granted for certain development which necessarily entails creating a new access or enlarging an existing one, then that permission may by inference include permission for the operations needed in forming or altering the access. It may also be possible to regulate the use of existing accesses to the site by the terms of the permission.

C7. Many matters concerning the use of highways can be dealt with under the Highways Act or other statutes. The transport of excavated mineral material constitutes one of the heaviest types of traffic. Rural roads are sometimes inadequate for the purpose; surfaces can also be liable to break up under the strain. Section 59 of the Highways Act 1980 provides for the recovery of any extraordinary expenses which have been or will be incurred by the highway authority on maintenance due to excessive weight or extraordinary traffic. Section 278 of the Highways Act 1980 permits the highway authority to enter into agreements with others who would especially benefit from such road works, for them to contribute towards the cost of modification works and may extend to maintenance payments in appropriate circumstances. Such works might include the widening of approach roads, the provision of passing places or the improvement of road junctions. Planning permission cannot properly be made conditional on such an agreement being made but such an agreement may be made conditional on planning permission being granted. A 'Grampian' condition requiring that access improvement be carried out before development commences can also be used.

C8. Mud deposited on roads by quarry traffic may be dealt with under the general provisions of sections 148 and 149 of the Highways Act 1980 but, unless the roads in the immediate vicinity of a quarry can be seen to be consistently muddied, identification of the source of soiling could prove difficult. Prevention of environmental damage at source is preferable to action through the courts after the event. The imposition of conditions requiring the sheeting of lorries, the installation and use of wheel and chassis washing equipment near the site exit, or the provision of concrete roads leading to the exit are alternative ways of dealing with the problem.

(b) Lorry routes

C9. Offers are sometimes made by mineral operators to restrict their lorries to particular routes. Such schemes have sometimes proved successful but not all lorries calling at a site are likely to be in the control of the operator and in law a planning condition cannot control the right of passage over public highways. Some measure of control may result from a condition requiring the posting of a notice at the site exit requesting all drivers either to use or avoid particular routes. Highway authorities have powers under the Road Traffic Regulation Act 1984 to make traffic regulation

orders to prevent the use of certain roads by unsuitable types of traffic for example heavy commercial vehicles. But such orders, which might restrict by weight or size, would apply to all traffic in prohibited class irrespective of its origin or destination since it would be impracticable to distinguish vehicles visiting a particular site. If there is serious doubt whether local roads can accommodate such increase in heavy traffic as the proposed development is likely to generate, then, unless improvements are made or there is convincing evidence that control of traffic is feasible, planning permission may have to be refused.

Working programme

(a) Hours of working

C10. It is important to impose a condition establishing when operations should be carried out at the site. For example, a restriction on night time and weekend working might serve to meet objections to plant and traffic noise from nearby residents. Where specialist equipment is needed it may be appropriate to impose a condition requiring that the times when the equipment is used must be agreed between the MPA and the operator.

(b) Direction of working and progressive working

C11. Where a large area is to be worked over a number of years, it will often be found possible to reduce disturbance by imposing a condition requiring work to be carried out in accordance with a prearranged programme. Such a programme might divide the permission area into a number of smaller areas to be worked out and reclaimed in succession. This would enable the surface occupier to know within fairly narrow limits what his tenure would be and to plan accordingly, for example in arranging farm work. It would also ensure that extensive areas are not left unreclaimed for a lengthy period. This objective can sometimes be achieved simply by specifying the direction of working. However, a detailed pre-arranged programme covering a number of years could well be upset by unpredictable working difficulties, changes in the nature of the deposit and fluctuations in demand, all of which may affect the speed or method of working.

C12. In suitable cases it may be preferable for conditions to specify a general phased scheme requiring the submission and agreement from time to time of more detailed programmes or phases of working and progressive reclamation. These could be particularly useful in operations with a long time-scale such as hard rock quarrying where techniques and other factors may change in an unforeseen manner over the life of the working. Exceptionally it may be necessary to require that the working of the whole site, or of one particular part of it, and, where appropriate, its restoration, shall cease by a specified date, for example when the local planning authority have arranged with the operator to use the worked-out site for some other development which it is important to begin by a certain date.

(c) Limitation on depth of working

C13. It may sometimes be desirable to impose conditions which limit the depth of the excavation. Such conditions may control landscape impact, restoration and after use and the safeguarding of underground water supplies. They may also be used where it is desirable to achieve a particular land form without the importation of filling materials (in remote rural areas where filling materials may not be available or in other areas where infilling may be unacceptable). But the imposition of such conditions needs to be carefully considered bearing in mind the possibility that the consequences could be a waste of minerals, in that the resource may not be fully exploited, and/or a greater lateral area of working, or pressure to exploit other resources in possibly more sensitive locations.

(d) Limitation of production

C14. Where the environmental impact of increases in production, particularly on traffic flow, is likely to be great it may be appropriate to impose a condition limiting output at individual sites. However, difficulties of enforcement may arise from the imposition of limits, especially at larger sites, where production may be subject to market fluctuations and other variables. In such cases conditions should not place inflexible limits on the annual output from the site, but should relate to an average annual output over a period of years. Before imposing output limits MPAs should discuss the circumstances of the particular case with the operator.

(e) Topsoil and subsoil preservation

C15. Planning conditions will normally need to be imposed to require the separate stripping, storage (where necessary) and respreading of topsoil, subsoil or any other soil making materials. Further advice is contained in MPG7.

Buildings, fixed plant and machinery

C16. Restrictive conditions attached to a planning permission can override the permission granted by the GPDO for the erection, alteration or extension of buildings, plant and machinery. The unobtrusive siting of buildings, machinery and plant, or even their siting on the quarry floor, can mitigate the visual impact of the working. But the type, siting, design and construction will often be determined by the requirements of the development itself and the power to withdraw the GPDO permission should be exercised only in exceptional circumstances (see Annex B).

C17. It is usually desirable to require that buildings, plant and machinery needed in connection with minerals development are eventually removed, either for amenity reasons or as part of the reclamation of the site. However, removal can be a difficult and expensive operation and should be required only where justified when considered in relation to the benefits which would be obtained. Account should be taken for example of any possible subsequent use of the buildings or the need to preserve buildings of special interest. The removal of buildings, plant and machinery can be achieved by conditions requiring that they be removed within a specified period of when the development authorised by the permission has ceased. Such a condition will in general relate to all plant and machinery installed after the granting of permission, whether it is specifically authorised by the permission or erected under the permission granted by the GPDO. In this connection it should be noted that any development erected under Parts 19 and 20 of the Schedule to the GPDO on or after 5 December 1988 is already subject to a condition requiring its removal and restoration of the land within 2 years of mining operations having permanently ceased. In addition, in the case of underground mines, all disused outlets should be properly treated at the time the mine is abandoned and records of such treatment should be passed to the appropriate authorities.

Environmental protection

C18. PPG23 *'Planning and Pollution Control'* gives guidance on the relevance of pollution controls to planning functions. Planning conditions should not be used to control matters that are the proper concern of the pollution control authority, except where planning interests can be clearly distinguished.

(a) Control of dust, smoke and fumes

C19. Dust, smoke and fumes are subject to control under several statutes. The Environmental Protection Act 1990 provides that at prescribed premises the 'best practicable means' must be used

to prevent the emission into the atmosphere of noxious or offensive substances and for rendering harmless and inoffensive any substances which may be emitted. Cement works, lime works and mineral works (defined as works in which metallurgical slags, pulverised fuel ash or minerals other than coal or moulding sand in foundries are processed) are prescribed for the purposes of the Act. The Act also applies to emissions from certain mineral processes and activities.

C20. Where these statutory powers of control do not apply, or cannot deal with the wider planning issues effectively, it may be desirable to impose planning conditions requiring the adoption of recognised methods of suppression and control of dust, such as the spraying of materials with water at suitable stages in their handling and transport, the watering of those areas of the site regularly used by vehicles (to prevent the raising of dust) and the use of dust extractors. Exceptionally, it may be necessary to prohibit certain types of processing, although due regard must always be paid to the effect of the prohibition on the working of the site as a whole. In all cases the practicability and the cost of the measures proposed must be considered carefully and professional advice sought. Advice on the control of dust from mineral workings is given in the Department's research report *'The Environmental Effects of Dust from Surface Mineral Workings'* [Arup Environmental, 1995, HMSO ISBN 011 753186 3].

(b) Noise

C21. Mineral working can give rise to considerable noise and this will be a major consideration where mineral working is proposed close to dwellings or other noise-sensitive properties. While local authorities (and individuals through magistrates' courts) can use the provisions of Part III of the Environmental Protection Act 1990, as amended by the Noise and Statutory Nuisance Act 1993 to control noise where it amounts to a nuisance, it is preferable for such control to be exercised from the outset through the use of appropriate conditions attached to the planning permission. Factors to be considered when examining ways to reduce noise disturbance include the siting of plant in relation to dwellings, prevailing wind direction and existing screens, all of which have a bearing on noise levels.

C22. PPG24 *'Planning and Noise'* advises on the principles and specific criteria by which the Secretary of State will be guided in taking planning decisions and on which local planning authorities should base their own policies. MPG 11 *'The Control of Noise at Surface Mineral Workings'* provides specific guidance to MPAs and the industry on the control of noise and the imposition of conditions in respect of mineral workings. In particular the guidelines recommend the use of a model modified from that in British Standard 5228 for the prediction of the likely level of noise emissions from a proposed mineral development; recommend a method for setting noise limits for mineral sites which can be incorporated into planning conditions; provide advice on how the noise levels can be most effectively monitored and on remedial steps which should be taken, to ensure that local communities are not subjected to noise emissions above an acceptable level and discuss a number of noise control practices which can be made the subject of planning conditions and/or incorporated into good practice by the operator.

(c) Management of Waste

(i) Mineral wastes from the permission site

C23. Conditions controlling the way any mineral waste is to be disposed of should always be attached to a planning permission for mineral working. Conditions should aim to prevent the disfigurement of the countryside, the sterilisation of unworked mineral deposits, and any interference with other natural resources, such as water supplies and fisheries or important ecological habitats. Conditions can sometimes ensure that waste is turned to a positive use. For

example, in many quarries waste can eventually be disposed of in the quarry itself and can often be used to raise the floor of the quarry to make it more suitable for some form of after-use. It may also be possible to deposit the waste in other areas of the site eg in excavations or hollows or to raise the level of the land to prevent flooding. The advice of the Environment Agency must always be sought before drawing up appropriate planning conditions.

C24. Some types of waste may be used as bulk-fill for roads. DOE Circular 20/87 (WO 36/ 87) advises that highway authorities, in consultation with the mineral and local planning authorities and waste producers, should identify at the earliest opportunity whether suitable waste material is likely to be available within a radius of about 10 miles of the prospective routes of the new road. Information about the use of waste materials in roads construction can currently be obtained from the Aggregates Advisory Service (Freephone 0800 374 279) set up as a trial service in 1997. Information can also be found in reports on research undertaken by DETR-see Annex D.

C25. Where primary material is obtained from a borrow pit, it is recommended that the road contractor and highway authority adhere to the 'Code of Practice on the Use of Borrow Pits and the Disposal of Waste from Highway Construction and Structural Maintenance Schemes' devised in agreement and published by the Planning Officers Society and the County Surveyors Society with endorsement from the Association of Metropolitan District Engineers in 1995.

C26. If none of these alternatives is feasible, the land to be used for tipping should be carefully chosen. The site will usually have to be reasonably near the workings for reasons of cost and practicability. However considerations of amenity, the current and future use of the land, the land drainage and water supply systems of the area and the need to avoid sterilising mineral resources by badly sited waste tips are all factors which should be taken fully into account. Use of the evaluative framework for the assessment of alternative colliery spoil disposal options prior to the 'submission of a formal planning application can help identify realistic choices for tipping locations (see paragraphs B10 to B14 of Annex B to MPG3 'Coal Mining and Colliery Spoil Disposal' July 1994).

C27. It will nearly always be desirable to specify by condition a maximum height for a tip. The shape of a tip is often dictated by the method of tipping and the quantity and nature of the waste to be disposed of, but wherever practicable it is desirable to incorporate a condition requiring the material to be spread evenly and shaped to harmonise with the contours of the surrounding landscape. What can be done will normally depend on the machinery available, the methods of working and safety factors. It should be borne in mind that while high tips will encroach less on land which might be used for other purposes, it may be found that a low flat tip can more readily be converted to some other use later.

C28. If tips are capable of supporting vegetation, conditions can be imposed requiring the planting of grass, shrubs or trees to help them to merge with their surroundings. The capacity of a tip to support vegetation will depend on the physical and chemical nature of the materials and on the configuration of the tip. Where a tip would not otherwise support vegetation it may be possible to impose a condition requiring it to be covered with soil or overburden, but consideration would have to be given to the availability of the covering material and the possibility of it being washed or blown away. The possible techniques and practicability of such treatment should be taken into account by the operator in drawing up proposals for working a site and by the MPA when considering what conditions to impose. Detailed advice is given in MPG7.

C29. Tailings, the fine-particle residues from mineral processing which are generally disposed of as a slurry to tailings dams, can have considerable pollution potential, depending on the particular mineral involved and the mining processes used. The possibility of seepage, the question of safety and stability, the visual impact on the surrounding landscape and the effect on land drainage must

all be taken into account when a tailings dam is proposed. Any potential water pollution will be subject to control by the Environment Agency who will need to be consulted at planning application stage and the imposition of any conditions suggested by them should be carefully considered. Further guidance is given in MPG7.

(ii) Safety of mineral waste tips

C30. The safety aspect of mineral waste tips (both solid and liquid), including their siting, drainage, design and construction, are covered by the *Mines and Quarries (Tips) Act 1969* and the supporting *Mines and Quarries (Tips) Regulations 1971* which give details of procedures for investigating and securing the stability of active, closed and disused tips within the meaning of the 1969 Act. The legislation contains detailed requirements and MPAs should bear these in mind when considering the need to impose planning conditions. Detailed conditions may make it difficult for owners to meet their legal obligations. The Health and Safety Executive (HSE) administer the safety legislation in respect of active and closed tips and MPAs should seek their advice before imposing specific conditions.

(iii) Importation of waste

C31. It is sometimes the case that the reclamation of surface mineral workings includes bringing in wastes from other sources as fill materials. If these are wastes other than from a mine or quarry their disposal on site will also require a waste management licence under section 33 of the Environmental Protection Act 1990, which deals with the depositing of controlled waste. A fundamental difference between a site licence and a planning permission is that the former is granted to a licence holder, the latter runs with the land. The basic aim of licensing is to ensure that waste management facilities, including landfilling operations, entail no unacceptable risk to the environment or harm to human health. The Environment Agency will not reject a licence application for a landfill development where planning permission is in force if it is satisfied that the applicant is a fit and proper person, unless it is satisfied that rejection is necessary for the purposes of preventing pollution of the environment or harm to human health. Consequently, licences will normally be issued with conditions attached which are intended to regulate the operation of the landfill in some detail and to ensure health and environmental quality, in particular water quality, are safeguarded.

C32. Effective operation of the planning control and site licensing systems in parallel requires close co-operation between those responsible. The National Rivers Authority (now the Environment Agency) Position Statement on Landfill and the Water Environment contains useful guidance on this matter. The consequences of disposal of some controlled wastes can continue long after landfilling has ceased (such as gaseous emissions, discharge of polluted leachate and unanticipated settlement or ground collapse) and these effects can extend beyond the confines of the site. Conditions attached to the planning permission should cover aspects affecting amenity, access and general landscaping and the overall reclamation of a site. In particular, careful attention needs to be given to ensuring pollution control systems and restoration are designed in ways that are mutually compatible.

C33. Guidance on current good practice in landfilling controlled wastes is given in the DETR/Environment Agency series, Waste Management Paper No 26, volumes A-F. Advice on the relationship between planning and waste disposal legislation is given in PPG23 and in DOE Waste Management Paper No 4. (See also publications listed in Annex D).

(iv) Protection of groundwater

C34. The EEC directive on the protection of groundwater (80/68/EEC) requires:

- a. prevention of the introduction into groundwater of certain highly dangerous substances; and
- b. limitation on the introduction of certain less toxic substances so as to avoid pollution of groundwater.

In order to comply with these requirements all activities giving rise to discharges to groundwater either directly or indirectly (for example by the leaching out of these substances) must receive prior authorisation. The Environment Agency has been appointed as the competent authority to implement the directive. Under sections 85-86 of the Water Resources Act 1991 the consent of the Environment Agency is required for any discharge of effluent made direct to groundwater. Consents are also required for most discharges of effluent which may lead to an indirect discharge to groundwater. The Government has recently consulted on proposed new Regulations which would extend protection of groundwater. These Regulations would reinforce existing controls which protect groundwater. The principal new elements introduced by these Regulations would be:

- i. that disposal or tipping of controlled substances would be included in the system of authorisation in cases where the existing waste management licensing system does not apply. Those wishing to dispose of such substances must apply to the Agency prior to any disposal activity; and
- ii. that the Environment Agency (in England and Wales) and SEPA (in Scotland) would have a duty to issue notices prohibiting or controlling other activities in or on the ground involving controlled substances where this was necessary to prevent the entry of List I substances into groundwater or pollution from List II substances. Those observing statutory codes of practice would not normally be served with such notices.

The National Rivers Authority document on the Policy and Practice for the Protection of Groundwater provides useful advice on this issue. PPG23 gives advice on the interaction between planning and pollution controls.

(d) Blasting

C35. Blasting often gives rise to public concern and it is desirable to impose conditions to regulate the time when blasting is to be permitted (or, in certain circumstances to prevent it altogether), to ensure adequate arrangements are made for public warning and to set limits on ground vibration. Air overpressure cannot be readily measured. Prevailing meteorological conditions can significantly affect the overpressure from blast to blast. Good blasting practice will keep overpressure to a minimum and conditions should therefore require details of the methods to be employed to minimise air overpressure to be submitted to the MPA for approval prior to the commencement of blasting operations. Conditions prohibiting secondary blasting, or specifying the alignment of the quarry face, may also sometimes be justified.

C36. The statutory responsibility for safety in blasting rests with HSE. The specific legislation of control of the use of explosives at Quarries is the *Quarries (Explosives) Regulations 1988*. Complaints are almost always about the effect of vibration on buildings or the projection of rocks through the air (flyrock). Secondary blasting, involving the reduction in size of large pieces of rock dislodged by primary blastings, is difficult to control and is a potential source of flyrock. The use of non-explosive methods, such as drop balling, is an alternative worth considering. Evidence suggests that the appropriate alignment of a quarry face may reduce the likelihood of rock being projected towards nearby dwellings.

C37. Bearing in mind that flexible blast design is an essential part of the overall safety of the operations and that blasting requirements will almost certainly change as the quarry develops, MPAs may find it more appropriate to set down broad conditions to be achieved, rather than resort to greater detail. They will also need to ensure that planning conditions which are designed to protect surrounding areas from ground vibration or noise from blasting do not cut across good and safe practice under the Mines and Quarries legislation. Advice from HSE should always be sought before conditions to control blasting are imposed.

Surface water, drainage and pollution control

C38. Minerals development may lead to problems of water supply, pollution and land drainage. The use of water by an operator may diminish the flow of a river. The discharge of effluent, the removal of filtering strata and the contamination of surface or rainwater from contact with disturbed strata may lead to the pollution of rivers or underground supplies. The disturbance of land may interfere with the natural flow of springs. Drainage problems include the disposal of effluent and the disruption of field drainage systems. The deposit of waste on the washlands of a river may give rise to flooding and in certain circumstances excavation may interrupt drainage systems well beyond the limits of the worked area.

C39. There is a substantial body of legislation specifically concerned with water supply, drainage and pollution including the *Water Resources Act 1991*, Part I of the *Environment Protection Act 1990*, the *Salmon and Fresh Water Fisheries Act 1975* and the *Land Drainage Act 1991* (and by-laws made under this and earlier Drainage Acts) and the private acts of some county councils and water undertakings. These Acts were amended by the *Environment Act 1995* which also established the Environment Agency. The Agency inherited all of the functional responsibilities of the NRA including protection of water courses against pollution and general supervision over land drainage.

C40. Where these statutory powers of control do not apply, or could not be applied effectively, and the MPA in consultation with the Environment Agency consider that permission for the development ought not to be granted without special safeguards, it will be necessary to attach conditions to the permission. These should indicate precisely the steps to be taken, or the activities to be prohibited, in order to safeguard water supplies. Conditions in general terms, such as those which specify that 'no interference with or pollution of local water supplies shall be permitted', would be difficult to enforce and should not be imposed. Operators should take appropriate action to avoid pollution when abandoning a mine, as required under the *Water Resources Act 1991*. *The Mines (Notice of Abandonment) Regulations 1998* (SI No 1998/892) have been introduced which require operators to notify the Agency where it is proposed to abandon an underground mine.

C41. Pollution of underground supplies may take place as a result of the removal of filtering strata. Where this is likely it may be necessary to attach a condition that a layer of filtering material of a given minimum thickness shall be left unworked. Also, there may be some possibility of pollution of local water supplies by seepage from wet pits, particularly if unsuitable material is used for filling, and it may be necessary to impose a condition requiring that only material acceptable to the Environment Agency shall be used for filling. Where controlled waste (as defined in the Environmental Protection Act 1990) is to be the fill material, however, the waste management licence will make such a provision as is necessary to protect water from pollution including, if necessary, the exclusion of certain types of waste. The applicant for a waste management licence has a right of appeal to the Secretary of State if the Environment Agency: rejects the application, does not reach a decision on it within four months or such longer period as is agreed in writing with the applicant, or grants a licence with conditions to which the applicant objects.

C42. The risk of silting up drainage systems by solid matter in effluent from mineral workings may be covered by the powers available to the Environment Agency and planning control should not normally be used. But where the discharge of large quantities of water is an essential part of the mineral operations, and serious silting might otherwise take place, it will be necessary, to the extent that other legislation does not cover the matter, to impose planning conditions requiring the water to be passed through settling tanks or silt beds.

C43. The creation of spoil heaps or the deposit of overburden on the washlands of a river can in certain circumstances cause serious drainage problems by increasing both the incidence and the duration of flooding. The same problems can also be caused by filling quarries or shallow aquifers with impermeable material. In certain circumstances the Environment Agency has powers to control the deposit of mine or quarry waste near rivers.

C44. Section 29 of the *Water Resources Act 1991* provides exemption from the need to obtain a licence for the abstraction of water where abstraction is necessary in the course of working, subject to the operators giving the Environment Agency notice of their intentions where required. This exemption facilitates the common practice amongst mineral operators of temporarily pumping water from workings which are below the level of the water table in order to avoid 'wet' working. However, this practice can have a lowering effect on the water table even at a substantial distance and can adversely affect neighbouring farms, aquifers, private wells and trees in the vicinity. In order to minimise such effects, the Environment Agency may, on receipt of a notice of works, issue a notice requiring the operator to take specified reasonable measures to conserve water.

C45. There is no legal remedy by which a person deprived of ground water by the legitimate activities of his neighbours can obtain redress and it is doubtful whether planning conditions could invalidate the rights implied under the 1991 Act. Where de-watering is proposed and is likely to have a seriously detrimental effect on neighbouring land, the possibility of 'wet' working, or other means of overcoming the problem (eg legal agreements to provide alternative water supplies), should be discussed with the operator but, if no solution can be found, planning permission may have to be refused.

Landscaping

C46. Detailed advice on landform and landscaping is given in MPG7 . Conditions will usually be required to minimise adverse effects on the existing landscape both during and after working. Effective screening can improve the appearance of mineral workings by hiding objectional features or softening the harsh lines of buildings. Screening may be achieved by planting trees and shrubs of appropriate species, by the construction of earth bunds or by utilising the natural ground contours of the site. A screen may serve additional purposes by attenuating noise and reducing dust. If safety considerations can be met, a screen of rock can sometimes be left unquarried or overburden can be used in the formation of embankments at the edge of the working so as to hide it from surrounding viewpoints.

C47. As much use as possible should be made of suitable existing trees since growth is slow and new trees may not prove adequate for screening purposes until many years after planting. Section 197 of the *Town and Country Planning Act 1990* requires local planning authorities to ensure, where appropriate, that planning permission for development is subject to conditions requiring the preservation and planting of trees. Section 198 of the Act empowers a local planning authority to protect trees by making tree preservation orders (TPOs) which bring under the control of the authority the felling, lopping, topping and uprooting of specified trees and woodlands. However, planning permission, granted or deemed to be granted, overrides any existing TPOs on the site and enables trees to be lopped or felled if this is necessary to carry out the development authorised. This

does not apply where the development is permitted under the GPDO and it may be necessary to make special provision by condition to protect trees from damage or require their replacement. *The Hedgerow Regulations 1997* (SI No 1997/1160) made under S 97 of the *Environment Act 1995*, provide for the protection of important hedgerows.

C48. The Forestry Commission is willing to give advice where new trees are to be planted for screening purposes. Where landscaping is to take place on or adjacent to an SSSI, developers and MPAs should consult English Nature on the scheme of replanting. Plans will need to be made and implemented well in advance of projected working. In other cases, for example if a well known landscape is affected, conditions may need to set out the planting scheme in greater detail and require the use of specialist advice. The species to be planted should always be suitable ones which will be in harmony with the surrounding landscape. Regular examination will be necessary to ensure that tree screens are maintained and that dead trees are replaced where necessary.

Boundaries and site security

C49. In general, conditions to secure the safe enclosure of quarries and mineshafts should not be imposed where the statutory powers are adequate. Fencing and other precautions necessary in the interest of public safety are dealt with in Regulation 9 of the *Mines (Shafts and Winding) Regulations 1993* for working mines and in section 151 of the *Mines and Quarries Act 1954* for non-working mines and for quarries, whether working or not. Section 165 of the *Highways Act 1980* and section 25 of the *Local Government (Miscellaneous Provisions) Act 1976* also provide for the fencing of sources of danger such as excavations close to the highway or to places of public resort. The erection of fencing to protect cattle on adjoining pasture land will usually be provided for in the contractual arrangements between the farmer and his landlord or, where the farmer owns the land, between the farmer and the mineral operator. Where land is to be restored and aftercare is to be carried out it may be appropriate to attach conditions relating to the enclosure of the area to be so treated. Fencing may also be needed for example to protect significant ecological or archaeological features.

Restoration and aftercare

C50. Among the most important conditions are those which seek to ensure that the land from which the minerals have been extracted is reclaimed at the earliest opportunity to facilitate a beneficial after-use of the site. Schedule 5 to the *Town and Country Planning Act 1990* enables MPAs to impose an aftercare condition requiring that the restored land is planted, cultivated, fertilised, watered, drained or otherwise treated for a specific period so as to bring it to a required standard for agriculture, forestry or amenity use. Detailed advice on restoration and aftercare conditions is given in MPG7 '*The Reclamation of Mineral Workings*'.

Subsidence and support

C51. Where minerals are extracted by underground working there is a risk of subsidence. This may result in damage in varying degrees to the land surface, land drainage, water courses, roads, railways, buildings and other surface installations. The Common Law right of support from adjacent or underlying strata may have been modified by agreement between the surface and mineral owners or lessees or by statute, eg the *Coal Mining (Subsidence) Act 1991*, as amended by the *Coal Industry Act 1994*.

C52. Generally the owner of the land surface has a Common Law right to support from adjacent or underlying strata necessary to preserve the surface intact. Any person carrying out operations likely to withdraw this support may be restrained from continuing or, if support has already been

withdrawn, may be held liable for any damage caused to the land and any installations and buildings on it. This broad principle has been greatly modified in detail by agreements entered into at various times between owners of the surface and persons owning or acquiring rights in the underlying minerals. The right of support may have been surrendered altogether or replaced by an obligation to leave specified support, or to pay compensation for damage caused. The owner of a particular stratum of minerals also has a Common Law right of support from underlying strata.

C53. Section 7 of the *Mines (Working Facilities and Support) Act 1966* enables a landowner to apply for restrictions on the working of minerals to secure support for building or works where it is not reasonably practicable for him to obtain this by private arrangement. Section 7 of the 1966 Act requires application to be made to the Secretary of State for Trade and Industry, who refers the matter to the Court, which considers whether it is expedient in the national interest that restrictions be imposed.

C54. Generally, operators licensed by the Coal Authority have a right to withdraw support from coal bearing land and, under the *Coal Mining (Subsidence) Act 1991*, as amended by the *Coal Industry Act 1994*, are required to make good or pay compensation for any subsidence damage.

C55. Legal obligations to maintain support or rights to require support to be left will not always be sufficient to ensure that no subsidence takes place. Reliance on existing rights and duties may therefore be unwise in some circumstances and it may be necessary to consider the use of planning powers to reduce the impact of subsidence. Conditions should not, however, duplicate or modify existing rights and liabilities and, in particular, should not conflict with legal obligations under a mining lease or health and safety legislation. A balance needs to be struck between the rights of surface owners to enjoy support and those of the mineral operator to work the mineral in question.

C56. In some cases, subsidence predictions may indicate that damage would be widespread and serious, or a surface installation may be so important that it would be wrong to incur any risk of damage. In such cases of major conflict between mineral development and existing use of the surface, it will be appropriate for planning powers to be used to control subsidence by restricting working or even preventing it taking place at all.

C57. Conditions which simply provide that support is not to be withdrawn or subsidence allowed to take place would be difficult to enforce and should not be imposed. Where potential subsidence damage cannot be reduced to an acceptable level by preventative measures, or where subsequent repair of subsidence damage would not represent the best land use planning solution then the only effective way of preventing subsidence may be to withhold permission to work within prescribed areas or to restrict working to a particular seam. In general, the greater the depth at which the minerals are to be worked, the more widespread will be the resulting subsidence (although it will generally be less severe) and the greater the quantity of the mineral it may be necessary to sterilise in order to protect any particular surface feature. A balance must be struck between the importance of the surface interest, the prospects of repairing damage that unrestricted working may cause and the value of the minerals that would be sterilised by imposing working restrictions. Conditions may require a particular method of working, such as partial extraction of the mineral or, alternatively, specify the rate at which particular panels are worked to ensure that the resulting subsidence is sufficiently even and gentle to avoid the worst effects on the surface. In all cases the views of the mineral operator and the HSE should be sought and expert advice taken on the practicality and efficacy of proposed conditions and to ensure that they do not conflict with legal obligations under health and safety legislation before they are incorporated in planning decisions.

C58. Where the conflict is between mineral development and proposed future use of the surface rather than existing use, new surface development should not be allowed to sterilise valuable

mineral deposits if reasonably alternative locations are available. It may be possible in such cases to coordinate the mining programme with the progress of surface development so that the latter can be carried out in stages at times when settlement has ceased and parts of the surface are again stable.

C59. The pumping of water from surface or underground workings may withdraw hydrostatic support from adjacent or overlying land and may also lead to subsidence. Since dewatering may be essential to the mineral operation, its limiting by condition may be difficult. However, a condition requiring monitoring of the effects of dewatering and the carrying out of remedial action if damage should occur may be appropriate in some cases.

C60. Surface mineral workings may similarly damage land, buildings or structures on adjacent land as a result of removing lateral support to that land. It may thus be necessary to impose conditions requiring the operator to leave unworked a margin of sufficient width to ensure support to adjoining land, to take suitable precautions to maintain support if such a margin cannot sensibly be left or specifying the slope of the final face of an excavation to prevent landsliding or accidents or to prepare for the after-use of the site. Conditions should be precisely drafted: for example, a condition requiring a working face to be left at a 'natural angle of repose' is vague and difficult to enforce. PPG14 provides advice on surface development on unstable land and slope stability.

Annex D: Bibliography - Legislation relevant to Minerals Planning

Primary legislation

The Commons Act 1876
Metropolitan Commons Act 1866 -1898
Law of Property Act 1925
Mineral Workings Acts 1951
Mines and Quarries Act 1954
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Mines and Quarries (Tips) Act 1969
Mineral Working Act 1971
Local Government Act 1972
Health and Safety At Work Act 1974
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Local Government (Miscellaneous Provisions) Act 1976
Highways Act 1980
Local Government, Planning and Land Act 1980
Wildlife and Countryside Act 1981
Road Traffic Regulation Act 1984
Mineral Workings Act 1985
Environmental Protection Act 1990
Planning (Hazardous Substances) Act 1990
Town and Country Planning Act 1990
Planning and Compensation Act 1991
Land Drainage Act 1991
Water Resources Act 1991
Coal Mining (Subsidence) Act 1991
Noise and Statutory Nuisance Act 1993
Railways Act 1993
Coal Industry Act 1994
Environment Act 1995

Secondary Legislation

Mines and Quarries (Tips) Regulations 1971
Town and Country Planning (Prescription of County Matters) Regulations 1980
Health and Safety (Emissions in the Atmosphere) Regulations 1983
Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 as amended by SI 367 (1990), SI 1494 (1992) and SI 677 (1994)
Quarries (Explosives) Regulations 1988
Town and Country Planning (Development Plan) Regulations 1991
Town and Country Planning (Fees for Applications and Deemed Applications)(Amendment) Regulations 1993 (as amended)
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Town and Country Planning (General Permitted Development) Order 1995
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Town and Country Planning (Environmental Assessment and Permitted Development) Regulations 1995
Town and Country Planning (Minerals) Regulations 1995

Town and Country Planning (Compensation for Restriction on Mineral Working and Mineral Waste Depositing) Regulations 1997
Hedgerow Regulations 1997 (SI No 1997/1160)
The Mines (Notice of Abandonment) Regulations 1998 (SI No 1998/892)

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PPG11 , Strategic Guidance for Merseyside, Oct 1988
PPG12 , Development Plans and Regional Planning Guidance, Feb 1992
PPG13 , Transport, Mar 1994
PPG14 , Development on Unstable Land, Apr 1990
PPG14 ,(Annex) Landslides and Planning, Mar 1996
PPG15 , Planning and the Historic Environment, Sept 1994
PPG16 , Archaeology and Planning, Nov 1990
PPG17 , Sport and Recreation, Sept 1991
PPG18 , Enforcing Planning Control, Dec 1991
PPG19 , Outdoor Advertisement Control, Mar 1992
PPG20 , Coastal Planning, Sept 1992
PPG21 , Tourism, Nov 1992
PPG22 , Renewable Energy Annexes to PPG22 , Feb 1993
PPG23 , Planning and Pollution Control, July 1994
PPG24 , Planning and Noise, Sept 1994

Current Minerals Planning Guidance Notes

MPG1 , General Considerations and Development Plan System, Jun 1996
MPG2 , Applications, Permissions and Conditions, July 1998
MPG3 , Coal Mining and Colliery Spoil Disposal, July 1994
MPG4 , Revocation, Modification, Discontinuance, Prohibition and Suspension Orders-Town and Country Planning (Compensation for Restriction on Mineral Working and Mineral Waste Depositing) Regulations 1997, Aug 1997
MPG6 , Guidelines for Aggregates Provision in England, Apr 1994
MPG7 , The Reclamation of Mineral Workings, Nov 1996
MPG8 , Planning and Compensation Act 1991 : Interim Development Permissions (IDOs)- Statutory Provisions and Procedures, Sept 1991
MPG9 , Planning and Compensation Act 1991 : Interim Development Order Permissions (IDOs)- Conditions, Mar 1992
MPG10 , Provision of Raw Material for the Cement Industry, Nov 1991
MPG11 , The Control of Noise at Surface Mineral Workings, Apr 1993
MPG12 , Treatment of Disused Mine Openings and Availability of Information on Mined Ground, Mar 1994
MPG13 , Guidelines for Peat Provision in England including the place of Alternative Materials,

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RPG1 , Strategic Guidance for Tyne and Wear, Jun 1989

RPG2 , Strategic Guidance for West Yorkshire, Sept 1989

RPG3 , Strategic Guidance for London, May 1996

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15/88, Environment Assessment

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