

Department for Natural Resources
Yr Adran Cyfoeth Naturiol



Llywodraeth Cymru
Welsh Government

Ms Pauline Elliott
Head of Regeneration and Planning
Caerphilly County Borough Council
Council Offices
Pontllanfraith
Blackwood
NP12 2YW

Ein Cyf/Our ref: qA1133610
Eich Cyf/Your ref: 13/0732/MIN
Dyddiad/Date: 16 June 2015

Dear Ms Elliott

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77 CALL IN REQUEST
PROPOSAL TO RECOVER 6 MILLION TONNES OF COAL BY SURFACE MINING
METHODS AND ASSOCIATED DEVELOPMENT ON 478 HECTARES OF LAND TO THE
WEST OF RHYMNEY, NORTH OF FOCHRIW AND SOUTH OF THE A465 HEADS OF
THE VALLEYS ROAD
APPLICATION NO 13/0732/MIN**

1. I am writing to inform you that the Welsh Ministers have been asked to call in the application referred to in the heading to this letter for their own determination.
2. I am authorised, by the Minister for Natural Resources, to consider whether the application should be called in for determination by the Welsh Ministers.
3. The Welsh Government's policy on calling in planning applications is set out in Planning Policy Wales (Edition 7, July 2014). The Welsh Government considers that local planning authorities, as elected bodies, should be left to make decisions about development proposals wherever possible. The Welsh Ministers do not, in practice, call in many planning applications and will only do so where the proposal raises issues of more than local importance.
4. To assist me in the consideration of whether the application raises issues of more than local importance I carried out a number of consultations and the responses are as follows:



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

Ffôn • Tel 029 2082 3878
John.saunders@wales.gsi.gov.uk
Gwefan • website: www.wales.gov.uk

Welsh Government Planning Directorate's Policy Branch with responsibility for minerals and landfill.

The application is for coal extraction and various associated activities as well as restoration and aftercare.

MPPW paragraph 62 and buffer zone: The relevant tests in MPPW paragraph 62 have been considered as part of the assessment undertaken by the local planning authority. MTAN2 states that surface coal developments will not generally be acceptable within 500m of settlements (and within protected areas), but contains potential exceptions. In this regard a 500m buffer zone has been imposed as part of the application. Detailed consideration has been given to individual impacts of the proposal individually and in the context of the health impact assessment and the 500m buffer zone. Therefore, we do not consider there to be any reasons of policy conflict in relation to these matters which would warrant the Welsh Ministers calling in the application.

Health Impact Assessment: The Ministerial Interim Minerals Planning Policy Statement 01/2009 states that Health Impact Assessment (HIA) should be provided to accompany any application for opencast coal working. Health Impact Assessment has been undertaken as part of the Environmental Impact Assessment submitted with these proposals and its scope is largely in accord with the parameters contained in MTAN 2. Comments have been received from relevant consultees and consideration of the relevant impacts included within the scope of the assessment undertaken by the local planning authority.

Restoration: Doubt about whether restoration can be secured is a factor which potentially raises matters of both policy conflict and controversy. MPPW says unless new mineral extraction provides satisfactory and suitable restoration, planning permission should be refused and that sufficient finance should be set aside to meet restoration and aftercare obligations. MTAN2 says that applicants should demonstrate to the satisfaction of the mineral planning authority that they are covered by a bond or an established and properly funded industry guarantee scheme, which would adequately finance a programme of restoration and aftercare in the case of default by the operator. The scope of the assessment undertaken by the council is based on current national planning policy and the announcement by the Minister on 22 April of the principle that there should be no liability greater than the value of the bond at any time.

In taking a strategic overview of all operating sites, the Welsh Government Coal Restoration Report (2014) suggests that potential exists for there to be insufficient finance at a number of sites. In this respect it is noted that the Planning Officer's assessment includes the available mechanisms to secure sufficient finance for restoration, the prospect of progressive restoration being undertaken and the potential for independent monitoring advice to be taken in relation to overseeing the accumulation and release of the bond over the duration of operations. As such, from the perspective of national planning policy and despite the context offered by the Coal restoration report, there do not appear to be any issues of conflict raised so as to justify call in.

The planning obligation should allow for enforcement against successors in title to the land and the release of the obligation should only take place on a sale of the land where satisfactory arrangements are put in place by the transferee and as envisaged by the local Acts which stands as a free standing guarantee. Any release clauses in the Section 106 should be carefully scrutinised to ensure that any breach caused by the transfer of land is still liable for that breach (it should always exclude any antecedent breach) and any changes of land ownership should be notified to the authority at least 6 months before they occur. These considerations are not specified, however, as a matter of national policy and there is nothing within the information provided to suggest the approach being taken toward restoration raises conflicts with national policy.

Ecology and landscape: National planning policy in relation to ecology, landscape and visual amenity have been considered as part of the assessment. The loss of habitat listed under Annex 1 of the Habitats Directive and designated as a local SINIC and the loss of species, including European protected species, associated with this was originally subject to an objection from Natural Resources Wales but this has since been withdrawn. On the basis of the information provided, the approach to the assessment of these issues appears to be in accord with national policy and in the context of the withdrawal of the objection from Natural Resources Wales, the matter is unlikely to raise issues of more than local importance such as to warrant intervention by Welsh Ministers.

Controversy: There is a significant amount of controversy surrounding the proposals but there is nothing in the information before us to lead to the conclusion that the controversy is of more than local importance.

The location of the application site adjacent to the boundary of one other local authority and in proximity to the Brecon Beacons National Park Authority means that there may be impacts beyond the boundaries of the Caerphilly administrative area. The committee report indicates that impacts on adjacent areas have been included within the scope of the assessment undertaken and as such issues of more than local importance are unlikely to be raised in this regard.

Need for Coal: MPPW states that while UK coal is acceptable and the generators continue to choose it, UK coal contributes to energy diversity and supply. It recognises that there are important amenity and environmental issues involved as part of this which require careful consideration. Whilst the need for coal has been considered within these parameters the scope of the assessment undertaken by the Council does not cover the strategic inter-relationship between all the operating sites in Wales and the market for Welsh coal, both currently and moving forward over the timescale of proposed operations. This is not detailed as an explicit requirement of national policy, however, and the scope of assessment has been undertaken within the general parameters of the national planning policy position.

Overall Conclusion

The choice facing Welsh Ministers, therefore, is whether the assessment of the application by the local planning authority has considered all of the relevant and reasonable issues of national planning policy that should be taken into account and in doing so carried out an assessment based on the full scope of the issues as they are known to exist. In this regard, we do not consider there to be any obvious policy conflicts or omissions which lead us to the conclusion that the scope of the assessment undertaken by the authority is such that Welsh Ministers should call in this application.

In the light of the comments above, it is considered that this application does not raise planning issues of more than local importance and, as such, it is not considered that it should be called in.

Welsh Government Agriculture and Rural Affairs Division in respect of common land

As policy lead for common land I have considered the papers submitted as part of your consultation and have the following comments to make.

The proposed development is to recover 6 million tonnes of coal by surface mining methods and associated development on 478 hectares of land to the West of Rhymney. It appears from the information supplied that the those with rights of common will be impacted upon by the proposal as will members of the public in terms of their right to roam under the Countryside and Rights of Way Act 2000.

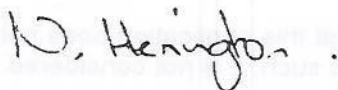
The Commons Act 2006 (2006 Act) provides for the safeguarding of commons for current and future generations, to help the Welsh Government to ensure that the stock of common land is not diminished. The 2006 Act also makes provision under Part 3 for Applications for Works on Common Land.

As I understand it national planning policy is contained in Planning Policy Wales, which indicates that common land is a finite resource and should not be developed unnecessarily. The Officers Report does outline the possible effects on the common and those exercising rights over the land and the use of the land for air and exercise but it does not go into any great detail as to the likely effects on the common or on those exercising rights over it. The report does state that common land is afforded protection under different legislation, specifically the Commons Act 2006 as no works can be undertaken on common land in Wales lawfully without the consent of the Welsh Ministers under the 2006 Act and if they were, enforcement action could be taken to remedy any damage caused.

Provided that the local planning authority, in this case Caerphilly County Borough Council, ensure that the applicants are made aware of the requirement to obtain the necessary consents from the Welsh Ministers under the Commons Act 2006 before undertaking any works on common land, from a common land policy perspective I see no basis for requesting call-in on the issue of common land.

5. Having considered the issues associated with the application in the light of the Welsh Government's policy on call-in and the advice provided by the consultees, I consider that those issues are not of more than local importance. In view of this, I do not consider that the application should be called in for determination by the Welsh Ministers and it is now for your Council to determine the application as it sees fit.
6. In reaching my decision I did not consider the planning merits of the proposed development and my decision not to call in the application should not in any way be taken as a reflection on the planning merits of the proposal.
7. Your Council has jurisdiction for deciding whether environmental impact assessment is required for this proposal and the Welsh Ministers have not considered the matter. Any screening opinion will need to be made available for public inspection.
8. It would assist us if a copy of any planning decision which your Council issues could be sent to my colleague, Clare Dicks (E-mail clare.dicks@wales.gsi.gov.uk).

Yours faithfully



NEIL HEMINGTON
Chief Planner
Department for Natural Resources

Signed under authority of the Minister for Natural Resources,
one of the Welsh Ministers