

PREFACE ITEM

APPLICATION NO. 13/0732/MIN

APPLICANT(S) NAME: Miller Argent

PROPOSAL: Mine approximately 6 million tonnes of coal from the Nant Llesg Surface Mine

LOCATION: Land West And South-West Of Rhymney

- 1 This application was reported to a special Planning Committee on 24 June 2015 at which a decision was deferred to allow officers to draft reasons for refusal based on objections raised by speakers at the committee. This report will also consider objections raised by members of the committee, and it should be read in conjunction with the report to the special committee which is attached as an appendix and provides a fuller review of the objectors' views, the policy context for considering the application, and officers' analysis.
- 2 Twenty-two people and two councillors spoke in objection to the scheme. This report will consider the material planning considerations that were raised, provide draft reasons for refusal, briefly consider the justification for those reasons, and advise members of the potential consequence of refusing planning permission in this case.
3. Before looking at the various material areas of concern, a number of issues were raised that should not form the basis of reasons for refusal.
 - The Council's ability or commitment to enforce conditions was questioned. The conditions recommended by officers are similar to those found on other permissions for this type of development, and comply with the tests in Welsh Government Circular 16/2014: The Use of Planning Conditions for Development Management. Conditions must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.
 - Concern was expressed about the applicants' current 'stewardship of the common', and allegations were made about activities on the land. This is not a material planning consideration.

- Reference was made to the removal of the objection by the Commoners' Association as being unconstitutional. Whilst individual commoners may still object to the scheme, their representative body has removed its original objection to the scheme, and any concerns about how that happened is a matter for its members, and should not have any bearing on the determination of the application.
- The removal of the special landscape area designation contained in the draft local development plan was achieved by the applicants through the appropriate consultation and inquiry procedure associated with that plan, and was agreed by a planning inspector.
- Concern was expressed about pressure possibly being brought to bear by The Coal Authority for coal to be mined in the areas of early remediation. That does not form part of the current application, would require planning permission in itself, and neither the applicants nor The Coal Authority have expressed any wish to promote mining for coal in those areas.
- Similarly, the use of the site as a landfill is not part of the current application. The proposal must be considered on the basis that the intention is to mine the coal, then restore the site.
- A vote by Welsh Assembly Members in support of and calling for a moratorium on opencast mining has not affected Welsh Government planning policy.

4. The concerns fall into following areas: the need for coal, job losses, tourism, noise, dust, pollution of watercourses ecology, the impact on future generations, health and wellbeing, loss of recreational facility cumulative impact, inadequacy of the bond, and visual impact.

4.1 The need for coal

The need for coal was questioned on the basis of the uncertainty of the existing markets, particularly the energy industry due to the need to shift towards the use of renewable sources, and European Commission infraction proceedings against the power station at Aberthaw on the basis of its emissions. Welsh Government document Energy Wales: A Low Carbon Transition advises that in the short term, gas, nuclear and bio-energy will provide the energy to compensate for the intermittent in supply from renewable resources. There is no mention of coal. Mineral Planning Policy Wales (MPPW) states at paragraph 10 that, "The essential role of mineral planning authorities in relation to mineral working is to ensure that a proper balance is struck between that fundamental requirement, the need to ensure a prudent use of finite resources, and the protection of existing amenity and the environment." A reason for refusal on that basis could state:

The need for coal is uncertain particularly in the energy sector due to the increasing use of renewable energy sources, and therefore the proposed development would not represent a proper balance between the prudent use of finite resources and the protection of existing amenity and the environment as required by Mineral Planning Policy Wales.

- 4.2 The Local Planning Authority has no evidence to support any concerns about the viability of the coal market. There is undoubtedly an intention on the part of Welsh government to encourage a shift towards the use of renewable energy sources, but the Overarching National Policy Statement for Energy (EN1) still envisages a need for fossil fuels, and MPPW still states that, "While UK coal is available and the generators continue to choose it, UK coal contributes to energy diversity and supply (para 61)." Representatives from two major customers - RWE npower and TATA Steel - addressed the Planning Committee and made it clear they intended to remain customers of the applicants. Coal imports exceed UK coal production suggesting that a local supplier is still needed. The Coal Authority has not raised any doubts about need. It would therefore be very difficult for the local planning authority to justify a reason for refusal on this basis.

4.3 Loss of employment at existing premises

A representative of Richards & Appleby, a local company, has stated that the dust problems associated with the mine would result in the business having to relocate. That concern has been reflected by a number of other objectors who have drawn attention to the importance of the business in providing jobs in the locality, particularly for women, and that many of the proposed jobs would be taken by people from outside the area. There was a view expressed as well that further investment in the area would be discouraged. A reason for refusal on that basis could state the following:

The proposed development would give rise to dust problems that would have an adverse impact on local businesses possibly resulting in their closure, and discouraging further investment in the Upper Rhymney Valley, to detriment of employment opportunities. The development would therefore be contrary to policies SP1, CW2 and CW15 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

The quoted policies make reference respectively to the promotion of the northern part of the County Borough as an employment area, the need to ensure that development does not have an unacceptable impact on the amenity of adjacent properties, and that proposals should not constrain the development of any adjacent sites for their allocated use.

4.4 A report was submitted from Cardiff Business School that supported the concerns of the objectors, but the Council's own Economic Development officer commissioned a report that cast doubt on those conclusions. There are industrial estates in close proximity to the existing opencast at Ffos-y-Fran, and evidence from other parts of the UK indicates that fears about disinvestment associated with opencast mines are unfounded. It would be difficult to justify a reason for refusal based on such concerns. The applicants have made commitments through the Section 106 Agreement to encourage job and training opportunities to be taken up locally, but the Council could not base an objection on the fact that eventually the employees may come from further afield.

4.5 Impact on tourism

The area was referred to as the gateway to the northern end of the borough, and the introduction of the mine and the overburden mounds would be harmful to its character, thereby discouraging tourism. A reason for refusal on that basis could state the following:

The proposed development of a large opencast mine and associated overburden mounds would have a detrimental impact on the character of the area, thereby discouraging tourism. The development would therefore be contrary to policy SP1 of the Caerphilly County Borough Local Development Plan up 2021 - Adopted November 2010.

The quoted policy makes reference to the promotion of the northern part of the County Borough as a tourism area.

4.6 This concern is based on an assumption, and there is no clear evidence that would support the reason for refusal.

4.7 Noise

Concern was particularly expressed about the noise arising from machinery, reversing alarms as well as the mineral train as it passes through the villages on its journey to Aberthaw. Reasons for refusal on that basis could state the following:

The vehicles, machinery and plant associated with the proposed development would generate unacceptable levels of noise that would be detrimental to the amenity of the residents of adjacent settlements. The development would therefore be contrary to policy CW2 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

The transport of coal from the Cwmbargoed Disposal Point by train would generate unacceptable levels of noise that would be detrimental to the amenity of the residents of settlements adjacent to the railway line. The development would therefore be contrary to policy CW2 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

Policy CW2 requires that development should not have an unacceptable impact on the amenity of adjacent properties or land.

- 4.8 The Head of Public Protection has not raised any objections on noise impact grounds. The applicants intend to install noise mitigation measures, and whilst more trains may use the line for a limited period, the number of slots currently allowed by Network Rail will not be exceeded. MPPW states that proposals should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage. The mitigation measures proposed would be secured by condition, which would include monitoring regimes, and limited hours of operation. It would therefore be difficult to justify those reasons for refusal.

4.9 Dust

Dust nuisance was expressed as a concern, and there was some scepticism about the effectiveness of the mitigation measures proposed by the applicants such as the water cannons. A reason for refusal on that basis could state the following:

General mining activities, the resulting unsurfaced roadways, the creation of overburden mounds, and the transport of coal by vehicles would generate unacceptable levels of dust that would be detrimental to the amenity of the residents of adjacent settlements. The development would therefore be contrary to policy CW2 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

- 4.10 The Head of Public Protection has not raised any objections on dust impact grounds. The applicants intend to carry out mitigation measures. MPPW states that proposals should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage. The mitigation measures proposed would be secured by condition, which would include monitoring regimes. It would therefore be difficult to justify that reason for refusal.

4.11 Pollution of watercourses

This matter was mentioned briefly at great length at the Planning Committee. A reason for refusal on this basis could state the following:

The activities associated with the proposed opencast mine would result in the pollution of the water environment. The development would therefore be contrary to policy CW5 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

Policy CW5 seeks to protect the water environment.

4.12 Natural Resources Wales (NRW) has not raised any objection on these grounds, and the applicants have proposed measures to ensure that the drainage impacts of the development are not harmful. The Council has no evidence to the contrary and so it would be difficult to justify that reason for refusal.

4.13 Ecology

Speakers drew attention to the impact of the development on the bird and insect population, the general loss of biodiversity during the lifetime of the opencast, and the unsatisfactory nature of providing compensation measures outside the county borough. A reason for refusal on this basis could state the following:

The proposed opencast mine and overburden areas would result in the loss of biodiversity on the site, with unacceptable impacts on bird and insect populations, and the proposed compensation measures are unsatisfactory due to their remoteness from the site. The development would therefore be contrary to policy CW4 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

Policy CW4 requires that within, or in close proximity to sites designated as sites of importance for nature conservation (SINC) or local priority habitats and species, proposals either conserve and where appropriate enhance the ecological or geological importance of the designation, or are such that the need for the development outweighs the ecological importance of the site, and where harm is minimised by mitigation measures and offset as far as practicable by compensation measures designed to ensure that there is no reduction in the overall value of the area or feature.

4.14 NRW and the Council's Ecologist scrutinised the scheme in some detail. Mitigation and compensation measures are proposed and secured through conditions and a Section 106 Agreement. The Bryn Caerau area of compensation is very near the site. It is also proposed to contribute financially to a scheme in West Wales, but the local planning authority has the opportunity to spend that money locally. The Local Planning Authority would not be able to provide evidence to support a reason for refusal on ecological grounds.

4.15 The impact on future generations

The Well Being of Future Generations (Wales) Act 2015 will place duties on local authorities in respect of sustainable development and require that public bodies must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. It is uncertain at present what impact that act will have on the determination of planning applications, but it is clear that it would not necessarily preclude the grant of planning permission for opencast mines, particularly if there is still support for such development in planning policy and the schemes are proposed and carried out in a sustainable manner. Furthermore reasons for refusal are not usually based on the need to comply with duties imposed by other acts. Concerns about climate change should be considered in the same manner. Whilst Welsh Government energy policy envisages a shift to renewable sources, planning policy still includes coal as part of the mix.

4.16 Planning Policy Wales states that development should amongst other things support the need to tackle the causes of climate change by moving towards a low carbon economy. However, it also advises that, "The planning system manages the development and use of land in the public interest, contributing to the achievement of sustainable development. It should reconcile the needs of development and conservation, securing economy, efficiency and amenity in the use of land, and protecting natural resources and the historic environment. A well functioning planning system is fundamental for sustainable development. (para 1.2.1) ...The planning system must provide for an adequate and continuous supply of land, available and suitable for development to meet society's needs." At present the public interest include the need for coal. A similar balance is found in the Caerphilly County Borough Local Development Plan up to 2021 – Adopted November 2010, one of the aims of which is to ensure that new development minimises emissions of greenhouse gases as far as is practically possible in order to mitigate the effects of climate change, but the coal at the application site is still safeguarded.

- 4.17 On the basis of the above it would not difficult to justify from a planning point of view a reason for refusal that stated:

The proposed development would be contrary to the goals of the Well Being of Future Generations (Wales) Act 2015, and the aims of Planning Policy Wales 2015 and the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010 in respect of the need to tackle the causes of climate change.

- 4.18 Health and wellbeing.

Worry, mental health issues, and respiratory problems were referred to as problems that would arise as a result of the scheme. A reason for refusal on this basis could state the following:

The proposed development would be detrimental to the physical and mental health and well being of the residents of the nearby settlements as a result of dust and particulate matter from the mine, and the anxiety and fear arising from that impact.

- 4.19 The Aneurin Bevan University Health Board's comments were reproduced in the addendum to the report to the special Planning Committee. They are of the opinion that on the basis of the information supplied they are advised that breaches of health-based air quality objectives are unlikely. The Council's Head of Public Protection agrees with this view, and long-term air quality monitoring is proposed and secured through planning conditions. The Council's officers are satisfied that dust and PM10 can be satisfactorily controlled, along with noise. A condition is also proposed with regard to setting up a liaison group that would include local representatives. On that basis it would be difficult to justify this reason for refusal.

- 4.20 Loss of recreational facility

Footpaths cross the common, and they are used by mountain bikers, hang gliders and walkers. A reason for refusal on this basis could state the following:

The proposed development would result in the loss of public footpaths and the opportunity they provide for a variety of recreation pursuits, to the detriment of the enjoyment, and health and well-being of the public.

4.21 The loss of the footpaths would be temporary and access would be provided through the early remediation areas early in the project, with an enhanced network provided across the whole site on restoration of the land. The associated recreational uses would be prevented from accessing the land but only for the life of the mine, and would probably find other areas nearby to carry out their recreational pursuits. On that basis it would be difficult to justify this reason for refusal.

4.22 Cumulative impact

The view was expressed that a mine at Nant Llesg would have an adverse cumulative impact when the presence of the Ffos-y-Fran opencast, the abattoir at Dowlais, and the Trecatti landfill site are taken into account. A reason for refusal on that basis could state the following:

The cumulative effect of the proposed development in association with the Ffos-y-Fran opencast, the abattoir at Dowlais, and the Trecatti landfill site, would be detrimental to the amenity of the residents of the nearby settlements due to the visual, noise, dust and odour impacts. The development would therefore be contrary to policy CW2 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

4.23 The Local Planning Authority has no evidence as to adverse noise and dust impacts. Odour was mentioned by an objector, but that presumably would be associated with the abattoir which is in the neighbouring borough, and some distance away from the application site. The Council has no evidence of related odour issues. There would be times when the two mines and the landfill would operate at the same time, but only until 2022. This would not be a sound reason for refusal.

4.24 Inadequacy of the bond

In view of the Scottish experience and events elsewhere in Wales, serious concern was expressed about the adequacy of the proposed bond. The MTAN states, "In all cases, operators should ensure that sufficient finance is available to enable them to meet fully restoration and aftercare conditions. This is important to avoid future dereliction and the possibility that the costs of reclamation of mineral sites might have to be borne by other public or private sources. The MPA should satisfy itself that the estimates are not unreasonable, and are index-linked, and to that end may wish to make use of an external specialist valuer.

Annualised restoration costs will take into account the life of the operation.” A reason for refusal on that basis could state the following:

The proposed restoration bond is inadequate to meet fully the restoration and aftercare conditions, and therefore the development could lead to dereliction and the possibility that the costs of reclamation of the opencast mine would have to be borne by other public or private sources. The development is therefore contrary to Welsh Government Minerals Technical Advice Note 2: Coal (2009).

4.25 The Coal Authority was commissioned to provide independent advice on the adequacy of the financial guarantee proposals. They raised no concerns provided an appropriate Section 106 Agreement was entered into and the applicants agreed to provide a sum of money at the start of the scheme. This reason for refusal would also be difficult to support on planning grounds

4.26 Impact on national park, and the setting of the conservation areas and listed building settings

Reasons for refusal in these respects could state the following:

The proposed development would have an adverse visual impact on the Brecon Beacons National Park.

The proposed development would have an adverse impact on the character and setting of the Butetown and Rhymney conservation areas and the listed buildings within those areas.

4.27 The difficulty with both reasons for refusal is the distance from the application site to the Park and the conservation areas. Welsh Government has already allowed Ffos-y-Fran in similar proximity to the Park, and it would be difficult to argue that an opencast at Nant Llesg would have any greater impact. Any cumulative impact would be short-term. These reasons for refusal would be difficult to support from a planning point of view.

4.28 Visual impact

The acoustic bund and the overburden mound, and their impact on Rhymney and Fochriw were the cause of some objection. The applicants' own evidence indicates that residents within two kilometres of the site with direct open views would experience major adverse effects due to changes in the landscape, during years 1 to 6 and 9.5 to 14 when the overburden and screening mounds were being formed and removed respectively.

In between times although those features would be grassed, there would be clear views of them from Rhymney and Fochriw. Although there would be some 450 to 500m between the bunds and the nearest houses, their elevation would aggravate their impact. A reason for refusal on that basis could state the following:

The proposed overburden mound and acoustic bund would have an adverse impact on the visual amenity of the residents of Rhymney and Fochriw during their construction and removal. Those aspects of the proposed development would be contrary to policy CW2 of the Caerphilly County Borough Local Development Plan up 2021 – Adopted November 2010.

4.29 Should members decide to refuse permission on this ground they would have to consider whether this temporary impact would outweigh policy support for the scheme and its benefits which are discussed below.

5. Welsh Office Circular 23/93 - Awards of costs incurred in planning and other proceedings

In view of the scale of this proposal, and the implications of having to defend complex reasons for refusal at an appeal, it would be prudent in this case to consider the guidance in this circular. It states that, “The guidance is intended both to support planning authorities in the proper exercise of their statutory responsibilities and to reflect the principle that the planning system should not prevent, inhibit or delay development which could reasonably be permitted, in the light of the development plan, so far as it is material to the application, and of any other material considerations.”

5.1 Of particular relevance in this case is the following advice: “In any appeal proceedings, the authority will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations.” Also, “Planning Authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers, or received from statutory bodies or consultees. But they will be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice; and they were able to produce relevant evidence to support their decision in all respects. If they fail to do so, costs may be awarded against the authority.”

5.2 With regard to the concerns of objectors, the circular comments, “local opposition to a proposal is not, by itself, a reasonable ground for refusal of a planning application, unless that opposition is founded on valid planning reasons which are supported by substantial evidence.”

5.3 In view of officers' original recommendation in the attached report, and comments in section 4 above, there is a strong likelihood that a refusal of the application for the reasons set out above would result in a substantial award of costs should the applicants successfully appeal the decision. Even if the refusal were upheld on the basis of one reason, costs could be awarded in respect of the other reasons.

6.0 Conclusion

6.1 Officers of the Local Planning Authority have considered the submitted application and recommended that it is acceptable from a planning point of view having taken account of the national and local policies and guidance, and the views of statutory consultees. Many of the objections raised by the public and voiced by the members of the Planning Committee are material planning considerations, but the evidence to support them is limited, and therefore they do not have sufficient weight to justify reasons for refusal.

6.2 Paragraph 62 of MPPW states that:

“Proposals for opencast or deep-mine development or colliery spoil disposal will be expected to meet the following requirements otherwise they should not be approved:

- The proposal should be environmentally acceptable or can be made so by planning conditions or obligations, and there must be no lasting environmental damage;
- If this cannot be achieved, it should provide local or community benefits which clearly outweigh the disbenefits of likely impacts to justify the grant of planning permission;
- ...
- Land will be restored to a high standard and to a beneficial and suitable after-use.”

The submitted scheme passes these tests for the reasons set out in the original report.

6.3 If Members refuse permission for any of the reasons set out above they will have to come to the conclusion that the scheme is environmentally unacceptable, and cannot be made acceptable by planning conditions or objections. Furthermore they will have to conclude that the community benefits do not outweigh the disbenefits of the likely impacts. Those potential community benefits include:

- the early remediation of the shafts and adits on the eastern side of the site.

- Enhanced public access to the common.
- Mitigation of the silting at the pond at Darren Valley Country Park.
- Nature conservation enhancements at Bryn Caerau and other sites in the locality, and
- The provision of training and employment opportunities for local people.

Those matters weigh in favour of the scheme. Furthermore the applicants are offering a community fund of between £3m and £6m. A recent Planning Inspectorate decision that allowed a surface mine in County Durham clearly regarded such benefits (£52,000 associated with a mine that will produce 520,000 tonnes of coal) as a material consideration. Planning Policy Wales makes it clear at paragraph 7.2.2 that LPAs are required to ensure that the economic benefits associated with a proposed development are given equal consideration with social and environmental issues, and there will be occasions when the economic benefits will outweigh the other considerations. The proposed development will supply indigenous coal to the energy and steel industries, provide employment and support the economy locally and nationally, and from a location served by a railway. The recommendation below remains the same as previously, but should members decide to refuse permission, they are strongly advised to limit the number of reasons to no more than one, the visual impact objection referred to in paragraph 4.28 being the most defensible.

RECOMMENDATION: That planning permission is granted on the basis of the report to the special Planning Committee on 24 June 2015. However, if Members are minded to refuse permission they are strongly advised to limit the reasons to one based on visual impact.
