

# Public Document Pack



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PUBLIC

To: Members of Regulatory - Planning Committee

Friday, 28 June 2019

Dear Councillor,

Please attend a meeting of the **Regulatory - Planning Committee** to be held at **10.00 am** on **Monday, 8 July 2019** in Committee Room 1, County Hall, Matlock DE4 3AG, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in cursive script that reads 'Janie Berry'.

**JANIE BERRY**  
**Director of Legal and Democratic Services**

## **AGENDA**

### **PART I - NON-EXEMPT ITEMS**

1. Apologies for Absence  
To receive apologies for absence (if any)
2. Declarations of Interest  
To receive declarations of interest (if any)
3. Declarations of Significant Lobbying  
To receive declarations of significant lobbying (if any)

4. Petitions

To receive petitions (if any)

5. Site Visit

Site Visit (as determined by the Executive Director – Economy, Transport and Environment after consultation with the Chairman and/or Vice Chairman in accordance with the Code of Practice):-

(i) Whitwell Colliery

6. Following the site visit the meeting will reconvene at 1.00pm in Committee Room 1, County Hall, Matlock.

7. To confirm the non-exempt minutes of the meeting of the Regulatory - Planning Committee held on 20 May 2019 (Pages 1 - 6)

To consider the non-exempt reports of the Executive Director - Economy, Transport and Environment on:

8. Former Whitwell Colliery Site (Pages 7 - 72)

Proposed Reclamation, Cut and Fill of the Former Whitwell Colliery Site to Facilitate Mixed Use Redevelopment of the Site, Together with Landscaping, Ecology and Drainage

Applicant: The Welbeck Estates Company Limited

Code No: CM5/0818/42

9. Section 73 Application Former Drakelow C Power Station, off Walton Road, Drakelow (Pages 73 - 96)

Section 73 Application to Not Comply with Condition 3 (Duration) and 4 (Approved Details) of Planning Permission Reference Number CW9/0218/94: Erection of a 15MW Renewable Energy Centre and Associated Infrastructure on Land at the Former Drakelow C Power Station, off Walton Road, Drakelow

Applicant: Future Earth Energy

Code No: CW9/0319/108

10. Proposed Diversion of Public Footpath No 11 - Parish of Chisworth (Pages 97 - 102)

11. Creation of Public Footpath at Lock Lane, Sandiacre and Proposed Extinguishment of Part of Long Eaton Public Footpath No.47 (Now known as No.68) - Long Eaton, Parish of Sandiacre (Pages 103 - 110)

12. Current Enforcement Action (Pages 111 - 112)
13. Outstanding Application List (to be circulated at the meeting)
14. Current Appeals/Called in Applications (Pages 113 - 114)
15. Development Management Performance Monitoring (to be circulated at the meeting)
16. Matters Determined by the Executive Director - Economy Transport and Environment under Delegated Powers (to be circulated at the meeting)

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**MINUTES** of a meeting of the **REGULATORY – PLANNING COMMITTEE** held at County Hall, Matlock on 20 May 2019.

**PRESENT**

Councillor M Ford (in the Chair)

Councillors J Atkin, J Frudd (substitute member) A Griffiths, L Grooby, R Iliffe, R Mihaly, R A Parkinson and B Wright.

Apologies for absence were submitted on behalf of Councillors D Charles and P Smith.

Councillor M Ford declared a non-pecuniary interest in relation to Agenda Item No 3 (3) as he was aware that the applicant had previously had planning applications considered by South Derbyshire District Council, of which he was a member. (Minute 31/19)

No Significant Lobbying had been received.

**28/19** **MINUTES RESOLVED** that the minutes of the meeting of the Committee held on 8 April 2019 be confirmed as a correct record and signed by the Chairman.

**29/19** **THE INSTALLATION OF A ROUNDABOUT JUNCTION ON THE A52 TO THE EAST OF ASHBOURNE GIVING ACCESS TO PREVIOUSLY CONSENTED DEVELOPMENT TO THE NORTH GRANTED BY DERBYSHIRE DALES DISTRICT AT LAND TO THE NORTH OF THE A52 DERBY ROAD, ASHBOURNE, FORMER ASHBOURNE AIRFIELD SITE APPLICANT: DERBYSHIRE COUNTY COUNCIL CODE NO: CD3/0419/1** As reported by the Strategic Director, this application was for the installation of a roundabout junction off the A52 giving access to a previously approved mixed-use development of the former Ashbourne Airfield. His report included details of the application together with comments received from consultees and following publicity. The site was on land including part of the A52 Derby Road, and part of the former airfield. The application site was not located in an area subject to sensitive natural or ecological designations. There were no designated heritage assets within the site, however, a grade II listed property “The Thatched Cottage” was located adjacent the site to the south-east. The report had been produced having regard to the special importance of the issue of harm to the setting of the listed building which was associated with the application in this case, as well as the benefits that the roundabout junction would bring as infrastructure required for the planned redevelopment of the former Ashbourne Airfield.

The report indicated that there would be considerable public economic and social benefits arising from the installation of the roundabout junction, which was considered to be an important infrastructural element in bringing forward additional housing, commercial and employment development, in accordance with Derbyshire Dales Local Plan (DDL P). The development of the former Ashbourne Airfield site was to be brought forward in two phases. The Phase 2 development would lead to the generation of traffic beyond the capacity of the signalled junction previously consented to by Derbyshire Dales District Council (DDDC) as part of the mixed-use development of the former airfield, which has the capacity to only serve Phase 1 of the development in isolation.

The applicant regarded the roundabout as being fundamental to the delivery of the Phase 2 development. The roundabout would facilitate a safe means of access not only for the approved Phase 1 development (development comprising an 8ha business park and 367 homes), but also 1,100 homes and a further 8ha of employment land under Phase 2 identified in the DDL P.

The proposal, however, did not accord fully with certain relevant policies in the DDL P and in the National Planning Policy Framework (NPPF). One such policy was that concerning listed buildings where it was considered the proposals would result in harm to the setting of the grade II listed building, although such harm would be less than substantial. The proposal would also result in landscape and visual impacts. Some of these impacts could be minimised through the imposition of conditions, although they would not prevent the impacts altogether. In determining planning applications, planning authorities must give special regard to the desirability of preservation of any affected heritage assets, including any listed buildings and their settings.

The imposition of conditions to control the design details for the roundabout junction including signage and lighting, would allow the Planning Authority to limit visual clutter to the minimum required in order to meet Highway Authority standards. Despite these mitigations, however, a 'less than substantial' level of harm to the heritage asset would still occur, which was still a consideration of great weight. The public benefits from the development, however, were significant and regarded by the Strategic Director as being of sufficient weight to justify a positive recommendation for the application, which having special regard to the desirability of preservation of the setting of the listed building (as required by Section 66), and having regard to the other impacts associated with the development as referred to in the report.

The application was therefore recommended in the report for approval subject to conditions substantially similar a set of the draft conditions listed in the Strategic Director's report.

Councillor Steve Bull attended the meeting to speak on behalf of Osmaston and Yeldersley Parish Council, and confirmed that the Parish Council had no objections to the proposal and that they felt that the roundabout would provide a better and safer solution than a traffic lighted junction system.

The County Councils Strategic Transport Manager Mr J Seymour, , who was attending the meeting to speak on behalf of the Council as applicant explained that the proposed provision of a roundabout played a significant strategic role in the expansion of the industrial estate and was a key component to the DDLP. This would not only provide the capacity but would future proof the Highway Network.

Members made several observations and raised some points for clarification which were answered by Mr Seymour, representing the applicant.

**RESOLVED** that planning permission be granted, subject to conditions substantially similar to the draft conditions detailed in the report of the Strategic Director Economy, Transport and Environment.

**30/19 PERMANENT RETENTION OF THE EXISTING INERT WASTE RECYCLING OPERATIONS, TOGETHER WITH THE ASSOCIATED OFFICE BUILDING, WORKSHOP EXTENSION, AND ASSOCIATED VEHICLE PARKING ARRANGEMENTS, MAGNET BUSINESS PARK, HIGH HAZELS ROAD, BARLBOROUGH APPLICANT: BRID'S LIMITED CODE NO: CW5/0618/24** As reported on by the Strategic Director, a temporary planning permission, with regard to inert waste recycling (in a smaller area at Magnet Business Park), had been granted on 2 May 2017, for a period of 36 months (expiring 2 May 2020).

Details were given in the report of the application together with comments received from consultees and following publicity. The operator had submitted this application to regularise the position on site and also to seek a permanent planning permission.

Bolsover District Council had provided comments in objection to permission being granted. No objections had been received from any other statutory consultees.

The proposal was considered by the Strategic Director to accord with local and national planning policy, and to be acceptable with regard to all material considerations, but particularly with regard to location of the development, dust and air issues, landscape and design, highways, flood risk

and drainage, and economic impacts. Any impacts associated with the development were considered to be to a reasonable level, or could, where considered necessary, be controlled through the imposition of conditions. The application was therefore recommended for approval subject to conditions.

Mr W Briddon, attended the meeting on behalf of the applicant and spoke for three minutes in support of his application.

Several comments were made by Members, which were in support of the recommendation for approval.

**RESOLVED** that planning permission be granted, subject to the conditions contained in the report of the Strategic Director Economy, Transport and Environment.

**31/19 THE PROPOSED EXTENSION TO THE SITE AND CONSTRUCTION OF A WASTE HANDLING BUILDING FOR THE STORAGE, TREATMENT AND PROCESSING OF REFUSE DERIVED FUEL AT THE FORMER RAILHEAD, CADEY HILL PARK, BURTON ROAD, SWADLINCOTE, DERBYSHIRE APPLICANT: WILLSHEES SKIP HIRE LTD CODE NO: CW9/1018/63**

The Strategic Director reported that this proposal was for the construction and use of a waste handling facility for the storage, treatment and processing of refuse derived fuel (RDF) for use in waste to energy plants.

In considering the proposal, the Strategic Director had had regard to concerns relating to landscape and visual amenity, ecology and biodiversity, land contamination, flood risk, emissions to air, highways impacts and their effects on local amenity and was satisfied that the effects of the development could be managed and mitigated through an appropriate suite of conditions.

The proposed development would provide an end use for locally produced waste reducing the need for landfill and for the export of waste. It was therefore considered that the proposal would provide a facility that would meet the needs of the local area, and in creating a fuel product from that waste, would be in accordance with the national policy goals of moving waste up the waste hierarchy and contributing towards sustainable waste management objectives.

Details of the application together with comments received from consultees and following publicity were given in the report of the Strategic Director Economy, Transport and Environment.

The development was considered by the Strategic Director to be in accordance with the development plan and was therefore recommended for approval.



Mr D Alcock spoke for three minutes as Agent on behalf of the applicant in support of the application.

Councillor Mihaly, whilst supporting the application, suggested that an additional condition should be added to those that were recommended, to prohibit any burning of waste on the site.

A motion then was proposed and seconded for a resolution in accordance with the officer recommendation subject to an additional condition to prohibit any burning of waste on the site

**RESOLVED** to approve that (1) the Screening report, set out in Appendix 1 to the Strategic Director's report, be endorsed as the conclusion of the assessment work relating to the application which is subject of the report (Code No: CW9/1018/63) for the purposes of the Conservation of Habitats and Species Regulations 2010; and

(2) planning permissions be granted for application CW9/1018/63 subject to the conditions contained in the report of the Strategic Director Economy, Transport and Environment, and an additional condition to prohibit any burning of waste on the site.

**32/19** **CURRENT ENFORCEMENT ACTION** **RESOLVED** to receive the report on current enforcement action.

**33/19** **OUTSTANDING APPLICATIONS** **RESOLVED** to receive the list on decisions outstanding on 20 May 2019 relating to EIA applications outstanding for more than sixteen weeks, major applications outstanding for more than thirteen weeks and minor applications outstanding for more than eight weeks.

**34/19** **CURRENT APPEALS/CALLED IN APPLICATIONS** **RESOLVED** to note that there were currently no appeals lodged with the Planning Inspectorate

**35/19** **MATTERS DETERMINED BY THE STRATEGIC DIRECTOR ECONOMY, TRANSPORT AND ENVIRONMENT UNDER DELEGATED POWERS** **RESOLVED** to note that the following applications had been approved by the Strategic Director Economy, Transport and Environment under delegated powers on:-

#### **11 April 2019**

- 1 Proposed Erection of Outdoor Catering Pod and Canopies at Itself Community Primary School, Doe Hill Lane, Itself

Applicant: Derbyshire County Council

**18 April 2019**

- 1 Replacement of the Timber Windows and Doors with Double Glazed Aluminium Units to the Residential Wings of Holly House School. Work to Include Replacement of Fascia and Rainwater Goods at Holly House School, Church Street North, Old Whittington, S41 9QR  
Applicant: Derbyshire County Council  
Planning Application Code No: CD2/0219/97
  
- 2 Replace Existing UPVC Window with Double Powder Coated Aluminium Fire Doors, with UPVC Glazing Panels to Match Existing Pottery Primary School, Kilbourne Road, Belpre  
Applicant: Derbyshire County Council  
Planning Application Code No: CD6/0219/91
  
- 3 Proposed Erection of a Sanctuary Pod and Hexagonal Timber Shelter at Ladywood Primary School, Oliver Road, Kirk Hallam, Ilkeston  
Applicant: Derbyshire County Council  
Planning Application Code No: CD8/0219/90

**2 May 2019**

- 1 Proposed Extension to Form Staff and Head of School Office, the Installation of Two External Canopies, Storage Shed and Landscaping Works at South Normanton Nursery School, Hamlet Lane, South Normanton  
Applicant: Derbyshire County Council  
Planning Application Code No: CD5/0119/83

**9 May 2019**

- 1 Erection of Approximately 23 Metres Linear; 2.4 Metres High, Green RAL 6005 Mesh Fencing at Charon's Family Support Centre, Lower Whitworth Road, Ilkeston, DE7 4LT  
Applicant: Derbyshire County Council  
Planning Application Code No: CD8/0319/103

## Agenda Item No. 4.1

## DERBYSHIRE COUNTY COUNCIL

## REGULATORY - PLANNING COMMITTEE

8 July 2019

Report of the Executive Director – Economy, Transport and Environment

- 1 PROPOSED RECLAMATION, CUT AND FILL OF THE FORMER WHITWELL COLLIERY SITE TO FACILITATE MIXED USE REDEVELOPMENT OF THE SITE, TOGETHER WITH LANDSCAPING, ECOLOGY AND DRAINAGE  
APPLICANT: THE WELBECK ESTATES COMPANY LIMITED  
CODE NO: CM5/0818/42**

5.255.22

**Introductory Summary** The Welbeck Estate Company Limited has submitted concurrent planning applications to Derbyshire County Council and Bolsover District Council (BDC). This application is for the reclamation by cut and fill of the former colliery tip and associated land with landscaping, ecology enhancements and new drainage as enabling works for the application to the district for a mixed-use scheme of new housing, employment land and public open spaces.

The proposed reclamation would contribute to the stated socio-economic benefits by providing the means to facilitate development of housing and employment opportunities in close proximity to each other and to existing employment opportunities, with good access onto the highway and rail networks and close to recreational and tourism opportunities.

The report gives special consideration to the issues and extent of potential harm to the nearby conservation areas, in which a degree of conflict with a policy of the Bolsover District Local Plan (BDLP) is identified.

The report concludes that the proposal, subject to approval of ecological and landscape management details and other detailed matters, which are capable of being delivered via planning conditions and legal agreement, would accord with national planning policy and accord with policies of the Derby and Derbyshire Mineral Local Plan (DDMLP). The application is therefore recommended for approval.

- (1) **Purpose of Report** To enable the Committee to determine the planning application.

(2) **Information and Analysis** The Welbeck Estate Company Limited is proposing the reclamation of the former Whitwell Colliery site by restructuring the landform and new landscaping, creating new open spaces, ecology enhancements and improved drainage systems. This would be in preparation for and to enhance the environment for a concurrent outline application which has been prepared and submitted to BDC for a mixed-use development of housing, employment and ancillary facilities on the site and adjoining land.

### **The Site and Surroundings**

The application site is located to the south-east of the Whitwell Village, adjoining the settlement edge. It lies within the Parish of Hodthorpe and Belp between the two settlements. The site measures approximately 47 hectares (ha) and comprises the former Whitwell Colliery site and associated tip situated between Station Road and Southfield Lane, and greenfield land to the north of Station Road. It has laid vacant since 1986 when the colliery closed.

The former colliery tip occupies the central part of the site, it is steep sided with an uneven plateau top previously occupied by a number of lagoons. The northern tip slope is densely vegetated with trees and scrub vegetation, the south, east and west slopes are more sparsely vegetated with bare soil/spoil. Localised exposed red shale, tailings, metallurgical slag and limestone gravel are present.

To the north-west and west of the colliery tip is an area of former railway sidings. To the north is the Robin Hood main railway and Whitwell railway station. Previously, the site was occupied by a sewage works, at the north-western extent of the tip, which has since been demolished. A small open channel stream flows southward across the site, to the east of the former sewage works. Hedgerow and trees line the site's boundary with Station Road.

To the north of Station Road, the site is agricultural land. The north-westernmost part of this land was formerly a small mineral quarry which is used for agricultural purposes. To the west of the site lies the Whitwell Quarry/Whitwell Works complex, as well as a mine gas pumping site.

As a result of its former mining use, the site imposes an artificial landform upon the local landscape, including uncharacteristically steep slopes. Within the central part of the application site (colliery tip), the highest point is at the uppermost part of the spoil, at circa 99m-100m above ordnance datum (AOD), with the lowest point being on the edge of Belp Village, to the west, at 64.77m AOD. The proposed residential development in this part of the site would, if approved, sit at ground levels between 82m-86m AOD and the employment area between 84m-89m AOD. The land north of Station Road is at its highest point in the north-western corner, where it meets the railway line,

peaking at 86.87m AOD. The fall across the site, to the lowest point in the south-eastern corner, is 70.60m AOD.

Access to the site is located on Southfield Lane. Part of the site (on agricultural land) is located to the east of Station Road. A cross over access between the tip site to the west of Station Road and this part of the site is proposed. Station Road rises to cross the railway bridge before entering Whitwell Village. Similarly, at Southfield Lane, the road rises to cross a railway bridge before entering Whitwell village.

Whitwell Conservation Area lies approximately 550m to the north-west of the site and Belph Conservation Area lies adjacent to the south-east of the site. Creswell Crags Site of Special Scientific Interest (SSSI) the Scheduled Ancient Monument (associated with Creswell Gorge) and Creswell Crags Conservation Area all lie to the south at approximately 1.2 kilometres (km) away. The landscape character is the Limestone farmlands of the Southern Magnesian Limestone. The Duke of Portland Sidings (unimproved calcareous and ephemeral grasslands) Local Wildlife Site (LWS) is directly north and bounded by Station Road and the railway line. The nearest residential properties lie to the south of Whitwell, separated by the railway line, and Sherwood Cottage, New Cottages and Portland Cottage lie opposite the site on Station Road with Doone Cottage adjoining the western extremity of the site. There are no known listed buildings on or near to the site. A public right of way (Footpath B15/4/1 Hodthorpe and Belph) lies to the north of the site between Green Lane and Station Road before reappearing to the south at Millash Lane.

### **Proposed Development**

Full planning permission is sought from Derbyshire County Council for the reclamation of the former Whitwell Colliery, Whitwell, Derbyshire. The reclamation is proposed to enable the mixed-use development of the site. An outline planning application for mixed-use development (residential, employment land and landscaped public open space), has been submitted to BDC, accordingly. The outline application being considered by BDC would provide 450 residential units and 6ha of non-residential development land.

The application, which is the subject of this report, is for the reclamation of the northern and north-western extents of the former colliery tip. This is proposed to be carried out through a cut and fill operation, to create suitable platforms for the proposed mixed-use development. Approximately 500,000 cubic metres (m<sup>3</sup>) of colliery spoils and slurry would be excavated in the process and redistributed across the site to create a new landform suitable for the mixed-use development. All suitable material from the tip would be reused as fill; any red shale found in the excavated material would be separated and stored for use on tracks and/or footpaths. Unusable excavated materials, such as timber, cabling, belting and any other deleterious materials, if encountered,

would be removed from site to a licensed waste facility. The reclamation works would also require the diversion of an existing sewer and the creation of a new part culverted, part open watercourse at ground level along the north-western edges of the colliery tip, for flood attenuation purposes. Topsoil would be stripped from the land to the north of Station Road and be reused across the rest of the site. It is not anticipated that any further soils would be required, however, any shortfall would be met through the importation of soils. Once the cut and fill works are completed, the proposed landscaping provisions would be implemented. A maximum of 20 heavy goods vehicles (HGV) movements per week associated with the reclamation phase is expected. The works are proposed to take place over a two year period and would be carried out in phases. The applicant has set out the key operations in each phase of the development as follows.

### **Phase 1/Phase 1 A**

Initial phase of works would include:

- Construction access off Station Road onto areas 1-2 and 5-6 (Phase 1).
- Construction access off Southfield Lane onto area 9 (Phase 1).
- Construction access off Southfield Lane onto areas 8 and 10 (Phase 1A).
- Stripping vegetation to all working areas (Phase 1A)
- Strip soil from eastern field prior to construction of new pond (Phase 1A).
- Commence the excavation of colliery infrastructure and processing area. (Phase 1).
- The stripping of soil from areas 1 to 4 and the transport and storage of the same to the main tip site. (Phase 1A).

The construction of the cross over accesses off Station Road are required in Phase 1 for the safety of vehicles crossing Station Road during the transfer of soil from areas 1, 2, 3 and 4 to the main tip site in Phase 2.

The construction of the new entrances onto Southfield Lane is required in Phase 1 because this would be the main service entrance for the site during the Earthworks and Reclamation Phase. Site traffic exiting to the east with access along Millash Lane would be prohibited.

All soil would be stripped from the eastern field prior to construction of the attenuation pond and ancillary works. Some of this soil would be replaced once construction of the pond and new ditches are complete but the remainder retained for re-use on the project.

### **Phase 2**

This phase includes:

- The construction of a new wet well/pumping shaft in area 7 and the laying of a new foul rising main from the west of the site, adjacent to the current

railway station, placed adjacent to and along Southwell Lane to the existing Sewage Treatment plant on Millash Lane.

- The construction of a new wet well/pumping shaft in area 4 and the laying of a new foul rising main across Station Road, along the eastern flank of the tip, to the sewage treatment plant on Millash Lane.
- The installation of services to commission both pumping stations.
- The diversion of the existing surface water culvert as it enters the site adjacent the railway station to a new culvert and open water course alongside Station Road to the new attenuation pond in the eastern field. This diversion is essential as the existing surface water culvert is under the tip and in danger of collapse.
- Construction of a permanent vehicular entrance off Southfield Lane into area 9, not to be used for construction vehicles.
- Construction of main vehicular entrance off Southfield Lane into area 10, not to be used for construction vehicles.
- Construction of main vehicular entrance off Station Road into areas 3 and 4, not to be used for construction vehicles.
- Retention of construction access crossovers at Station Road and Southfield Lane.
- The commencement of excavation of the tip in areas 5 and 6. The excavated material re-laid and compacted to fill voids in the central area of the main colliery tip.

### **Phase 3**

This phase includes:

- The continuation of excavation of the tip from areas 5 and 6 but with excavated material also placed and compacted in areas 9 and 10 following the commissioning of the pumping shaft and rising main in area 7 and the completion of the diversion of the surface water culvert, ditches and main attenuation pond.
- The completion and commissioning of the wet well/pumping station in area 4 and the rising main to the sewage treatment plant and a new surface water culvert and attenuation pond in area 4 connecting with the new surface water ditch alongside Station Road.
- The withdrawal and restoration of the former crossover access and creation of staggered development access into areas 1 and 2 and 5 and 6, not to be used for reclamation works.
- Retention of crossover construction access at Southfield Lane.

### **Phase 4**

This phase includes:

- Placing soils on the main tip and other areas proposed for planting/landscaping once all major earthworks are complete.

- Forming all tracks and paths as identified by the masterplan.
- Planting up of landscaped areas as dictated by the masterplan.
- The commencement of residential development in areas 1 and 2.

The above phases are itemised in the following submitted phasing plans:

13.012 37d – Reclamation Phase 1;  
13.012 40e – Reclamation Phase 1A;  
13.012 38e – Reclamation Phase 2;  
13.012 39f – Reclamation Phase 3; and  
13.012 41b – Reclamation Phase 4.

### **Environmental Statement**

The application is accompanied by an Environmental Statement (ES). The ES includes background information, descriptions of the site and surrounding area and the proposed development, together with a summary of what the applicant considers to be the relevant local and national policies relating to the proposal. The ES sets out the potential impacts of the development under the following topic headings and submitted technical annexes:

- Transport and Access.
- Noise.
- Ecology and Nature Conservation.
- Arboriculture.
- Geology, Ground Conditions and Contamination.
- Air Quality and Dust.
- Landscape and Visual Impact.
- Heritage and Archaeology.
- Socio-economic Change.
- Agriculture and Soils.
- Water Resources.

The applicant has also submitted additional and other information comprising of updates to the ES document schedule, phasing plans and ES Parts 2-5 Whitwell Colliery, Technical notes, a Written Scheme of Investigation (WSI) – Archaeology, a Transport Assessment, a Biodiversity Metric Technical Notes, a Landscape Masterplan, and a Drainage Strategy.

Material considerations and topic areas will be considered, where necessary, in more detail in the Planning Considerations section of this report.

### **Consultations Responses**

There have been two rounds of consultations on this application, the first following the receipt of the application and the second following a request for and submission of additional/other information to accompany the ES in



accordance with Regulation 22 of the Environmental Impact Assessment (EIA) Regulations 2011.

**Local Member**

Councillor McGregor has been consulted.

**Bolsover District Council**

**Planning Policy**

BDC has confirmed its Planning Policy position following minor modifications to the emerging Local Plan.

Whitwell Colliery is a strategic site allocation in the emerging Local Plan and a modified site area has been agreed in a Statement of Common Ground between the landowners and BDC prior to examination in public. As such, the allocation now includes additional land to the north of Station Road described as a “transition zone”.

The modified policy now says that the development should provide for a landscaped transition zone to the north of Station Road where the form, layout and density of housing development shall reflect the need to respond positively to the countryside edge and the important open break between Whitwell and Hodthorpe.

BDC confirms that the proposed development is no longer considered “an unacceptable departure from the Publication Local Plan” as reported in BDC’s Policy team comments on planning application 18/0045/OUT which is the mixed-use outline application submitted to BDC. Consequently, BDC has no objections to the proposal.

BDC refers to Policy SS6: Strategic Site Allocation – Former Whitwell Colliery site in the emerging local plan. The site is located within the area covered by Policy SS6.

The emerging Local Plan is almost through examination in public and therefore carries some weight given where it is in the process. There are no outstanding objections to the policy and BDC considers that the policy is consistent with the 2019 NPPF.

**Bolsover District Council - Environmental Health**

The Environmental Health Officer (EHO) provided a response regarding noise, air quality and dust and contaminated land:

**Noise**

Within the reclamation noise assessment, a series of sensitive receptors have been identified and then calculations of the potential impact, based on an

assessment of current noise levels, has been made. This has identified a very significant impact on a range of locations which the consultants have then suggested can be mitigated to acceptable levels.

However, the EHO raised a number of current concerns regarding the assessments that have been made as the existing noise levels appear to be high for the type of environment that is assessed in some locations. In addition, there are some isolated properties that do not appear to have been considered at all within the assessment that are likely to have significant impacts due to the existing low background levels. These cottages are at Millash Lane and two cottages, Doone Cottage and Meadowlands that are shown as sensitive location 4 but do not then feature further in the assessment. No background monitoring was undertaken in these locations.

With respect to the current noise predictions, the calculated noise levels are considered significantly higher than 55dB (A) LAeq which is what the EHO would expect for this type of development and the time period that the reclamation is likely to take. The noise assessment acknowledges this but states that noise levels will be acceptable due to the use of noise mitigation measures.

The EHO considers that this is extremely general and, whilst mitigation measures can and should be used, they would be looking for something more detailed at this stage to demonstrate that noise levels can be reduced to acceptable levels as quite substantial reductions will be required in places.

At this stage, the EHO is unclear whether parts of the reclamation are still likely to be on-going when the construction phases start so there may be a need to carry out assessments of the cumulative aspect. Therefore, at this stage, the EHO does not have sufficient information to determine whether the noise levels are likely to be acceptable and significant mitigation is likely to be required that may be challenging.

However, the EHO recommends that a condition be attached to any planning permission granted to require the submission of a construction environmental management plan (CEMP), to include measures for controlling noise.

#### Dust

The EHO considers that only a limited dust assessment has been carried out and submitted for this application and there is likely to be a significant issue relating to dust unless appropriate mitigation measures are put into place. Therefore, in the event that planning permission is granted, the EHO would require a more detailed dust assessment to be carried out for both the reclamation and construction phases and a CEMP developed for each phase that identifies the appropriate mitigation measures for dust, vibration and odour, including a suitable methodology for responding appropriately to any

complaints that are received. This should include a commitment to temporarily suspend works if justified until a suitable solution is identified to mitigate any unacceptable impacts.

The EHO also recommends that the CEMP should also include details of the hours of work, methods of controlling nuisance dust and soiling, odour and vibration which shall include, but not limited to, the provision of wheel washes, speed limits, damping down, locations of soil storage mounds and site compounds, etc.

#### Contaminated Land

The EHO refers to several studies that have been carried out over several years to get an idea of the level of contamination throughout the site. The EHO notes that there are two agricultural fields where residential use and a country park are intended. The EHO reminds the applicant that the use of residential assessment criteria for land that is intended to be a country park would not necessarily be appropriate as the potential exposures within that land use would differ significantly. However, there has been some lead, cadmium and zinc identified within those areas. The EHO was informally consulted in 2017 regarding the lead contamination at that stage and did not agree that the conclusion could be reached that the levels were as a result of background naturally occurring lead. There is also insufficient bio accessibility testing included within the reports to carry out a detailed quantitative risk assessment (DQRA) on that basis. The EHO identifies that the report submitted states that the lead is likely to be suitable to remain within garden areas although within subsequent reports available for the DCC application, the consultants have concluded that the levels of lead identified would not be suitable to be left within garden or landscaping areas without some form of cover system and the EHO does not disagree with that conclusion. At this stage, it is considered further studies for each individual area will be required to further refine the risk assessments that have been carried and allow remediation strategies to be developed.

Therefore, in the event that planning permission is granted for this site, the EHO recommends that conditions be attached relating to land contamination, investigation, site characterisation, risk assessment and remediation.

#### **Whitwell Parish Council**

*“Whitwell Parish Council would like to raise objections to works traffic travelling through the village of Whitwell during the proposed redevelopment works, instead the A60 to the A619 should be used, subject to any height restrictions, and all contractors to be informed of this restriction. The planning authority to consider mitigation measures for the impact of dust/debris created by the works on the local community.”*

### **Hodthorpe and Belph Parish Council**

Hodthorpe and Belph Parish Council has raised no objections.

### **Historic England**

No comments raised.

### **Environment Agency**

The Environment Agency (EA) provided the following comments:

#### Protection of controlled waters

The site investigation submitted as part of the planning application did not involve wholesale testing of the colliery material and the results of the sampling that was carried out were presented as initial quality testing only. The site investigation recommends that a remediation options appraisal is carried out. The site is significantly large and it is possible that areas of contamination exist at the site.

The 'Planning Statement – Reclamation Scheme' lists all the activities that will be carried out during the separate phases of reclamation. Section 3.4 states that several new wet well/pumping shaft will be constructed. The EA considers that these may relate to mains water supplies, but if they relate to groundwater pumping, the EA advises the applicant that, as of January 2018, most exempt water abstractions (such as dewatering) now require an Abstraction Licence.

The EA considers that the previous use of the proposed development site as a colliery and tip presents a medium risk of contamination that could be mobilised during construction to pollute controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is located upon a principal aquifer.

The Site Investigation Report – January 2016, submitted in support of this planning application, provides the EA with confidence that it will be possible to suitably manage the risk posed to controlled waters by this development. Further detailed information will, however, be required before built development is undertaken. It is the EA's opinion that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the Local Planning Authority.

The EA states its position being that the proposed development will be acceptable if a planning condition is included requiring the submission of a remediation strategy. This should be carried out by a competent person in line with Paragraph 178 of the National Planning Policy Framework (NPPF).

Without such a condition, the EA would object to the proposal in line with Paragraph 170 of the NPPF because it cannot be guaranteed that the

development will not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

### **The Coal Authority**

The Coal Authority provided the following comments:

*“The Coal Authority Response: Material Consideration  
The application site falls within the defined Development High Risk Area.  
The Coal Authority records indicate that within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application.*

*On account of the nature of the development which this planning application is proposing The Coal Authority has no objections.”*

Notwithstanding the above, and considering the content of The Coal Authority’s consultation response letter to planning application 18/00452/OUT (BDC), future control of any subsequent future development not encroaching within the vicinity of the two on-site shafts should be ensured by condition.

### **Natural England**

Overall – no objection.

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites, and has no objection.

Natural England provided the following specific comments:

*“Creswell Crags Site of Special Scientific Interest and Hollinhill and Markland Grips Site of Special Scientific Interest (SSSI).*

*Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.*

#### *Soils and Land Quality*

*From the documents accompanying the consultation we consider this application falls outside the scope of the Development Management Procedure Order (as amended) consultation arrangements, as the proposed development would not appear to lead to the loss of over 20 ha ‘best and most versatile’ agricultural land (paragraphs 170 and 171 of the National Planning Policy Framework).*

*For this reason we do not propose to make any detailed comments in relation to agricultural land quality and soils, although more general guidance is*

*available in Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, and we recommend that this is followed.”*

### **Network Rail**

Network Rail raise no objections subject to conditions.

### **Nottinghamshire County Council**

Nottinghamshire County Council (NCC) raised no objections and provided the following comments:

#### *“Strategic Transport*

*NCC has considered the Transport Assessment and the forecast traffic impact in Notts. The PICADY junction modelling results at the A60/A616 and A60/A632 junctions in Cuckney shows that the junctions would work within capacity, the worst performing arm being the A632 Langwith Road A60 approach at 0.77. No further assessment or highway mitigation is therefore necessary at the junctions in Cuckney.*

*In terms of the traffic impact on the A60 Darfoulds roundabout and the A57 junctions in Worksop, it is advised that the County Council will be seeking a financial contribution from the applicant towards the package of junction improvements in Bassetlaw. The Bassetlaw District Council website indicates the CIL charging rates for residential and commercial property, residential properties in the Worksop and Rural West zone are charged CIL at £20/m<sup>2</sup> of floor area and this could be taken to represent a rate that would be sought for all residential property at the 18/00452/OUT site in Whitwell.*

*It can be advised that NCC would be happy for DCC to deal with walking, cycling, public transport and the travel plan issues as outlined in the Transport Assessment.”*

### **Derbyshire Wildlife Trust**

Derbyshire Wildlife Trust (DWT) initially issued a holding objection to the proposal. In response to the second consultation on the additional information, DWT maintained its holding objection and provided the following comments.

*“Baker Consultants have now supplied biodiversity metric calculations for the reclamation of Whitwell Tip (Technical Note: Biodiversity Metric for Whitwell Colliery (22 March 2019)). We have the following comments:*

- We welcome the calculations to enable a quantifiable approach to the impact assessment and to ensure that adequate compensation is achieved.*
- We don't have any comments on the baseline evaluation, which would significantly alter the figures produced and these figures indicate that biodiversity gain can be achieved.*

- *We are still not confident that the small areas of open mosaic can be delivered within the woodland between the plateau and the lower slopes. This would require considerable management effort in the long-term, unless grazing was an option in this area. We suggest that creation of one or two wider rides connecting the plateaus with the lower slopes is likely to be more achievable and would allow open mosaic to be created along the edge of paths or more substantial grassland areas. This would also create more direct connectivity between areas of the site for butterflies and reptiles.*
- *We advise that both plateaus should aim for calcareous grassland on shallow soils.*
- *We query the loss of the established hedgerow running north-south in the east of the site and recommend that this is retained if possible as it creates a natural boundary between the tip and the field to the east.*
- *We advise that the far eastern area provides an opportunity to create a no-access area to provide compensatory habitat for ground-nesting birds. Formal footpaths could go to the large pond but then beyond should be retained for wildlife.*
- *We suggest that the creation of several smaller/shallower pools would benefit wildlife as it is extremely likely that the large pond proposed will become stocked with fish (formally or informally).*
- *It is essential that the future management of the site is secured in the long-term. This should consider whether grazing is a feasible option to reduce the costs of personnel required to trim/brushcut/scrape etc. to maintain the grassland and open mosaic habitat. If so stock fencing and water points should be included during the restoration of the site. Funding should be secured to manage the site in perpetuity and we would advise that management is undertaken by an organisation/company with experience of managing similar sites.*

*Currently, our holding objection still stands whilst a Masterplan is developed that satisfies all parties and achieves adequate compensation. If there are still significant points that cannot be agreed, the Trust would be happy to meet with the consultants in an attempt to resolve any outstanding issues.”*

### **Severn Trent Water**

No objection subject to the inclusion of an Informative relating to sewer connections.

### **Highway Authority**

Comments in response to the Initial consultation:

No objection subject to conditions and informatives. Conditions relating to junction improvements, passing bays and a Construction Traffic Management Plan (CTMP) to include a routing agreement were recommended.

Comments in response to the Regulation 22 Consultation:  
Regarding the additional information submitted in respect of the application. In respect of the highways aspect, the Transport Assessment (TA) has been updated to address the comments of NCC and, as such, does not alter previous comments.

### **Lead Local Flood Authority**

After reviewing the information supplied with this application, the Lead Local Flood Authority (LLFA) provided the following comments:

*“The applicant is proposing to discharge surface water to an existing ordinary watercourse within the site to the east at a discharge rate no greater than 38.7l/s. The LLFA will require the applicant to demonstrate at detailed design stage that the proposed destination for surface water accords with the hierarchy in paragraph 80 of Planning Practice Guidance.*

*The applicant proposes to attenuate surface water up to the 1% probability rainfall event, with natural sub-catchments of the site providing partial storage with the use of attenuation basins as part of the wider series, with an attenuation pond in the east of site providing the largest volume to achieve the full attenuation requirement.*

*A culvert which currently enters the site underneath the railway lines to the north-west site boundary, and then flows south-east towards the Severn Trent Water Sewage Treatment Works is proposed to be diverted, due to its condition and the depth of this culvert beneath the edge of the spoil heap. This is proposed to flow around the northern edge of the spoil heap, also draining sub-catchments of the site, before also entering the site’s main attenuation pond. The diverting of this watercourse and the abandonment of the current culvert will require consent under the Land Drainage Act, and as such appropriate applications should be made to the LLFA.*

*The outfall from this final attenuation feature is then proposed to join the original watercourse south-east of the treatment works. The LLFA note that this proposed connection connects at an approximate 90 degree angle, increasing the risk of erosion, and as such would like to see the connection at a more obtuse angle.*

*The LLFA requires at detailed design stage, evidence that the proposed drainage network and attenuation features are sized appropriately to manage the surface water on site, and the expected flows from the diversion of the watercourse through the site. This design should incorporate a 40% climate change allowance and 10% urban creep allowance where appropriate.*

*The LLFA will require a management and maintenance plan at the detailed design stage, demonstrating the maintenance requirement for the drainage*



*infrastructure on site, detailing the party appointed to be responsible to manage and maintain the infrastructure for the lifetime of the development and an alternative should the maintenance requirements not be met.”*

To ensure adherence to NPPF, the Department for Environment, Food and Rural Affairs (DEFRA's) Non-statutory technical standards for sustainable drainage systems and local guidance, the LLFA recommended conditions in relation to surface water management be attached to any grant of planning permission.

Overall, the LLFA raises no objections in principle subject to planning conditions.

### **Publicity**

This application has been subject to publicity including advertisement in the Worksop Guardian on 7 December 2018 and by site notices erected on 6 December 2018. The application has also been subject to a further round of advertising under the EIA regulations regarding additional and other information. This was advertised in the Worksop Guardian and by site notices on 3 May 2019. In response to this publicity the following comments have been received from the East Midlands Butterfly Conservation (EMBC).

*“We note the Ecologist Reports included within the Planning Application documentation and would point out that much of the information is now out of date and there has been insufficient emphasis placed on establishing the detailed status of the key butterflies both in terms of their location and population.*

*It is strongly suggested that dedicated butterfly survey work is undertaken again next year to fully establish the status of these key species and that this is undertaken at the correct times to coincide with the various flight periods and conducted during appropriate weather conditions.*

*We would draw your attention to the key butterfly species and assemblage, in particular the area important for butterflies on that part of the tip that faces roughly south adjacent to Millash Lane and Southfield Lane (see map at base with very approximate area indicated within the black line). Records have been supplied to us of key butterfly species that have colonised the site and this area in particular. These include the Dingy Skipper, Small Heath, Common Blue and Brown Argus.*

*Dingy Skipper and Small Heath are Lowland Derbyshire Biodiversity Action Plan species and are Section 41 Species of Principal Importance under the Natural Environment and Rural Communities (NERC) Act 2006 in England. A recent reported count of Dingy Skipper of over 50 individuals is high and indicates just how important this part of the site is for this species in County*

*and East Midlands terms. Dingy skipper is a relatively sedentary species that has sadly been in national decline for many years. In Derbyshire, away from the limestone areas of the Peak District, it is restricted mainly to rough grassland sites with low soil fertility that support good quantities of its food plant, Bird's Foot Trefoil. In the North and East of the county the species relies to a great extent on defunct industrial, mining and railway sites and as such the former Whitwell Colliery is one of a relatively few sites offering highly suitable habitat and conditions. These sites are in decline as development occurs and those that remain are usually left unmanaged and the required habitat therefore gradually deteriorates as natural succession proceeds unchecked.*

*The nature of the ground conditions and the habitat that has evolved in parts of the colliery site is fortuitous for the Dingy Skipper, and whilst such 'brownfield sites' with Open Mosaic Habitat are considered by some to be 'wasteland', in fact they constitute an important wildlife resource in areas of the wider countryside that sadly are now often relatively deficient in terms of biodiversity. We would point out that Open Mosaic Habitat is itself a Biodiversity Action Plan Habitat and a Section 41 Habitat of Principal Importance under the Natural Environment and Rural Communities (NERC) Act 2006 in England.*

*We would strongly encourage the plan to contain areas of open space and for this space to include biodiversity as an explicitly defined objective and for the existing habitat to be considered to be of value in its own right. In particular, we would suggest that any remedial or landscaping plans and subsequent operations are critically assessed as the habitat conditions for the key butterflies and other wildlife presently occupying parts of the site will easily be damaged or destroyed.*

*We would advise that management of the relevant area is necessary to retain the biodiversity value and to sustain the key butterfly species, and it is imperative that arrangements are made not only for this management to be defined and undertaken in both the short term and longer term, but that its future funding is fully included as part of the ultimate plan for the site. We would also advise that it has been our experience that such retained areas are often damaged before or during development on a casual basis, often through a lack of appreciation or awareness by contractors utilising these areas for storage or as a place to dump materials or to provide infill for elsewhere, and as such an Ecologist or fully briefed Clerk of Works would be usefully employed throughout the development cycle and at the earliest opportunity in order to ensure genuine protection and eventual success.*

*We would encourage the careful consideration of the existing ecological value of this site when deciding upon future plans. An opportunity presents itself for a more visionary approach for brownfield site development that better*

*balances economic, employment, housing, open space and biodiversity objectives. Valuable habitat for wildlife and butterflies in particular should be retained and enhanced at the site to provide a net gain in biodiversity but this will require careful planning, consultation, protection and habitat management – such an approach would contribute to the integral value of the site and be of benefit to the wider community and demonstrate a genuine commitment to nature conservation...”*

Following the second advertisement, EMBC provided the following additional comments:

*“This submission is additional to our submission pertaining to this same Planning Application dated 20th December, 2018, within which we detailed the butterfly conservation importance of the site and the area of particular concern and opportunity for retention and habitat management. We would reference this previous submission.*

*We have further considered the plans and attended the recent public consultation event in Whitwell village. We remain concerned that the important area of Open Mosaic Habitat will be severely compromised or destroyed by the intended landscaping. The map indicating the approximate area of concern (within the bold black line) is again included at the base of this letter for convenience.*

*We therefore wish to submit a ‘Holding Objection’, and would request further consultation regarding the loss of the important butterfly habitat.”*

No other representations from any other parties were received.

## **Planning Considerations**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In relation to this application, the relevant policies of the development plan are contained in the DDMLP and the saved policies of the BDLP. The NPPF and the national Planning Practice Guidance (PPG) are also material policy considerations.

### **National Planning Policy Framework**

The NPPF provides guidance on material considerations in the context of determining planning applications. It states that the purpose of the planning system is to help deliver sustainable development and adds that there should be a presumption in favour of sustainable development. The term sustainable development is not defined as such but is said to have economic, social and environmental aspects. The economic aspect is to provide sufficient land for the right type of development, in the right place at the right time. The social

role is to support strong and vibrant communities by providing for the needs of the community whilst fulfilling the environmental role of protecting and enhancing the natural, built and historic environment. The relevance of the NPPF is enhanced where the existing local plan is out of date.

### **Planning Practice Guidance**

The PPG repeats the message of the NPPF that the main purpose of the planning system is to deliver sustainable development to support the needs of society. It provides practical guidance on many potential environmental impacts, such as noise and dust impacts, which are of relevance to this proposal.

### **Derby and Derbyshire Minerals Local Plan**

The most relevant policies of the DDMLP are:

MP1: The Environmental Impact of Mineral Development.

MP3: Measures to Reduce Environmental Impact.

MP4: Interests of Acknowledged Environmental Importance.

MP5: Transport.

MP6: Nature Conservation - Mitigation Measures.

MP7: Archaeology - Mitigation Measures.

MP10: Reclamation and After-Use.

MP15: Working Of Former Tips (For Purposes Other Than Secondary Aggregate Production).

The main focus of the DDMLP is to set the approach to further mineral development over the Plan period. The approach includes the need to ensure that all developments include satisfactory provision for the reclamation and after-uses of mineral sites as soon as practical. Features, such as historic colliery spoil tips, were sometimes created prior to the introduction of the planning system and are not subject to planning permissions. The former colliery tip is a feature created by earlier mineral (coal mining) development and, as the proposal involves the reclamation of the site and restoration to new after-uses, it is appropriate to consider it against the provisions of the policies above.

Policy MP10: Reclamation and After-Use, states that mineral development will only be permitted where satisfactory provision has been made for reclamation and after-uses, subject to a set of criteria relating to practicality, timing and phasing of restoration, materials for infilling, drainage, and where the works would enhance the local landscape and biodiversity interests. The colliery tip originates from a mineral development and, although there is no planning requirement to restore the site, it is considered that this policy remains pertinent to the consideration of this reclamation based proposal.

In assessing the impact of the proposal consideration has been given to general environmental and social impacts. Policy MP1 states that “*proposals for mineral development will be permitted provided that their impact on the environment is acceptable.*” Policy MP3 states that “*proposals for mineral development will be permitted provided that any adverse effects on the environment can be eliminated or reduced to an acceptable level*”, having particular regard to a number of factors including the measures which are proposed to minimise the environmental impact of proposals. Proposals for mineral working will therefore be allowed only where the adverse effects on the environment can be avoided or reduced to an acceptable level, and this assessment is to be made having regard to all the considerations listed in Policy MP1. Policy MP4 seeks to safeguard the environment and prevent irreparable or unacceptable damage to interests of acknowledged importance such as agricultural land, areas of landscape importance, nature conservation, heritage, water resources, transport and cumulative impact on the environment.

A description of the location of the site and the potentially sensitive environmental receptors are provided earlier in the report.

Policies MP5, MP6, MP7 and MP15 provide additional tests and requirements relating to environmental impacts and amenity issues of relevance to this application.

### **The DCC Emerging Minerals Plan**

Derbyshire County Council and Derby City Council are jointly preparing a new Minerals Local Plan which will, when adopted, cover a period up to 2035. The emerging minerals plan has been subject to several rounds of initial consultation, the most recent being “Towards a Minerals Local Plan: Winter Consultation 2017/2018” which presented a draft version of the Plan, set out the vision and objectives and overarching strategic sustainability principles, together with the approach for each of the important minerals found in the area and which are likely to be in demand over the Plan period. A further consultation on the proposed draft plan is anticipated later this year. The emerging Minerals Plan is, however, too premature to carry any weight in the determination of this proposal.

### **Bolsover District Local Plan**

The saved policies of the BDLP which are of relevance to this proposal are:

CON4: Development Adjoining Conservation Areas.

CON11: Archaeological Sites and Ancient Monuments.

GEN1: Minimum Requirements for Development.

GEN2: Impact of Development on the Environment.

GEN11: Development adjoining the Settlement Framework Boundary.

ENV3: Development in the Countryside.

Policies GEN 1 and GEN 2 list the principles which the local planning authority follow in setting minimum requirements for the way development affects, and is affected by, its environment. These include parking and manoeuvring space, safe access, local highway network, landscaping and health and safety requirements. GEN 2 sets out 21 criteria based policies relating to the impact of a development on the environment. They form the basic criteria against which all development proposals are assessed. These policies effectively provide the starting point for the consideration of all development proposals, before moving on to consider other relevant policies. Relevant policies in this case are considered to be GEN 11, which seeks to minimise the visual impact of development on the countryside and ENV3 which seeks to restrict development in the countryside to that which is necessary, sustainable and without providing any harm to the rural environment.

### **Bolsover Emerging Local Plan**

The Bolsover emerging Local Plan carries some weight given its stage in the process of adoption. BDC and the applicant have entered into a Statement of Common Ground regarding the proposed allocation site SS6.

Whitwell Colliery is a strategic site allocation in the emerging Local Plan and a modified site area has been agreed in a Statement of Common Ground between the landowners and BDC prior to examination in public. As such, the allocation now includes additional land to the north of Station Road described as a “transition zone”.

The modified policy now says that the development should provide for a landscaped transition zone to the north of Station Road where the form, layout and density of housing development shall reflect the need to respond positively to the countryside edge and the important open break between Whitwell and Hodthorpe.

Proposals for the development of this strategic site will be permitted where they are guided by the indicative masterplan for the site and

- a) remodel the site to an appropriate landscape form;
- b) create a country park;
- c) enable completion of at least 200 dwellings within the site by 2033;
- d) optimise the use of the site or make best use of land;
- e) provide 5ha of B-use employment land;
- f) improve access to Whitwell train station;
- g) contribute towards minimising the need to travel by private car through provision of convenient access via sustainable modes of transport to locations of employment and services;
- h) contribute towards place making through the delivery of a high quality designed development through the use of a design code that creates an

- attractive and locally distinctive new urban neighbourhood utilising as appropriate public art;
- i) contribute towards conserving and enhancing the biodiversity of the District through the protection and incorporation of existing hedgerows, and woodlands, watercourses and the creation and enhancement of open flower rich grassland, wetland and scrub habitats within the site's general layout, design and orientation
  - j) contribute towards the efforts to tackle climate change through its approach to sustainable construction, renewable energy and energy conservation within the site's general layout, design and orientation;
  - k) demonstrates that adequate sewerage infrastructure and capacity exists or can be provided as part of the development;
  - l) avoid the sterilisation of important mineral resources;
  - m) conserve or enhance the setting of heritage assets, in particular the Belph Conservation Area and the wider setting of Creswell Crags;
  - n) due to the historic use of the site and the underlying principal aquifer, a detailed site investigation and remediation report shall be provided and any necessary works undertaken; and
  - o) provide for a landscaped transition zone to the north of Station Road where the form, layout and density of housing development shall reflect the need to respond positively to the countryside edge and the important open break between Whitwell and Hodthorpe.

BDC confirms that the proposed development is no longer considered “*an unacceptable departure from the Publication Local Plan*” as reported in BDC’s Policy Team comments on application 18/0045/OUT being the mixed-use outline application submitted to BDC.

### **Assessment of the Proposal**

In order to set the context for the assessment, it is appropriate to identify the main issues pertinent to the determination of this proposal. The application was accompanied by an ES in five parts:

Part 1 Non-Technical Summary.

Part 2 Background and description of Proposals.

Part 3 EIA Topic Area Assessments.

Part 4 Environmental Impacts – Cumulative Impacts and Conclusion.

Part 5 Technical annexes.

The assessment of the relevant issues below follows the order as set out in that document.

- Transport and Access.
- Noise.
- Ecology and Nature Conservation.
- Arboriculture.

- Geology, Ground Conditions and Contamination.
- Air Quality and Dust.
- Landscape and Visual Impact.
- Heritage and Archaeology.
- Socio-economic Change.
- Agriculture and Soils.
- Water Resources.

Firstly, the condition of the site and the general principle of the development in the context of the development plan and Government guidance is considered.

### **Condition of the Site**

The application site, and in particular the colliery tip, is a significant man made landform in the area and is unsightly in its present form and condition. The site may also contain unknown contamination from the previous mining use. Whilst the site has naturally regenerated in parts, the overall wider site would benefit from an appropriate restoration, thereby removing the remaining coal mining legacy in the area and providing a more appropriate landform and after-use.

Bar a very small 0.75ha (1.85 acre) plot leased to Alkane for an energy park, the site is largely vacant and this has mostly been the case since the colliery closed in 1986. The site is already of some nature conservation interest having, in part, naturally regenerated over the years. The site has also had industrial and commercial uses which have since been demolished leaving unrestored land.

### **Principle of the Development**

The stated aims of the proposal are to remediate an unrestored mineral spoil tip, with the provision of the land suitable for redevelopment (subject to planning permission by BDC regarding, beneficial after-use for mixed-use development.

At present, the tip and surrounding area is an unsightly man made feature in the local landscape, although it is acknowledged that the habitats that have developed on the site are of some ecological value. Its final restoration in this regard, would help to reduce the adverse legacy of the historic coal mining industry of Derbyshire. In principle, it represents the implementation of Policy MP10 of the DDMLP and, as such, is supported on merit. The supporting text to Policy MP 10 states that *“reclamation is more than simply returning the land to a satisfactory condition. It provides opportunities to achieve high level wider public benefits including landscape enhancement, the creation of greater diversity of wildlife habitats and the provision of new opportunities for recreation and public access.”*

The site was promoted as part of the withdrawn BDC pre-submission Local Plan (2013) and has recently been taken forward as a Preferred Option in its



emerging replacement, the Bolsover new Local Plan. Recently, this has included a Statement of Common Ground between the applicant and BDC regarding a residential allocation and forming part of the area contained in this application.

Part of the site comprises of remnant features and a mineral waste tip associated with the former Whitwell colliery underground coal mine, which contributes adversely to the local landscape. The proposed reclamation works would result in a significant improvement, delivering beneficial after-uses and local recreational facilities, and it would provide the enabling works to help deliver the strategic site allocation in the emerging local plan under Policy SS6. BDC has advised that there are no outstanding objections to this policy and is therefore to be supported in principle, subject to an assessment of the detailed aspects of the proposal concerning the impacts on the area, environment and local communities.

### **Transport and Access**

Chapter 8 of the ES considers the topic area of “Transport and Access”. The traffic and highway effects of the development were assessed and undertaken in line with the advice contained within the “Department for Transport – Guidance on Transport Assessment” and the Institute of Environmental Management and Assessment – Guidelines for the Environmental Assessment of Road Traffic.” The potential effects of development traffic on the local road network has been considered and was informed in part by the findings of the supporting TA.

The former Whitwell Colliery is located between Station Road and Southfield Lane and to the south-east of Whitwell railway station, operated by East Midland Trains (Robin Hood Line). The primary access to the former colliery was from Southfield Lane which fronts the site and is subject to a speed limit of 40mph with a 1.1m wide footway on its south western side.

Southfield Lane links Whitwell Village centre to B6042 in the south. To the north-west of Southfield Industrial Estate, Southfield Lane is subject to a 7.5T weight limit, except for access. Weight restrictions (vehicles over 7.5 tonnes prohibited) exist on Craggs Road, south of Hennymoor Lane and Millash Lane. These routes are proposed to be discounted to accommodate Heavy Commercial Vehicles (HCV) traffic movements.

Creswell Craggs is a scheduled monument located some 500m south of the Craggs Road/Hennymoor Lane junction. The current 7.5T weight restriction would direct all HCV traffic movements away from the site, as is currently the case.

Initial analysis showed that while the proposed development would add traffic flows to Southfield Lane, Station Road and High Street, they are not expected

to be any operational capacity concerns raised as a result and no mitigation is required. The wider highway network has also been appraised including along the A60/A57/A619 corridors and similarly no further mitigation is required.

The initial reclamation and construction period is likely to result in 20 additional vehicular trips per week over a 25-week period per year. It is considered that the local highway network in the vicinity of the site can accommodate traffic from the proposed development without compromising network capacity or safety.

The main vehicular access would be taken from Southfield Lane, Whitwell, for access into the former colliery site. Further points of vehicular access would be taken from Station Road, and a junction on Southfield Lane. It is also proposed to extend the 30mph speed limit along Station Road from the outset of the reclamation proposal. Both the Station Road and Southfield Lane railway bridges would be traffic signalled, have footpaths widened and carriageway width narrowed for improved traffic management and pedestrian links on approach to the village. There would be no 'through-route' for vehicles between Southfield Lane and Station Road during the course of the reclamation works.

The proposed points of access, their location and means of construction have been appraised to ensure compliance with the relevant "Highway Design Standards" for Derbyshire. A detailed TA has considered the impact of vehicle traffic on key road junctions in the vicinity of the site. As a result, there are improvements proposed to a number of junctions in the vicinity to enable them to operate properly with the increased volume of traffic.

Initially, Whitwell Parish Council raised concern regarding the potential for construction traffic to travel through the village. The applicant has since clarified that construction traffic is not proposed to travel through the village.

It is accepted that there would be vehicular traffic from the development that needs to be accommodated on the road network, however, the routes that vehicles are permitted to travel, hours in which movements operate, and types of vehicles permitted could be managed through the CTMP. The CTMP could form a planning condition to be attached to the Decision Notice if Members grant an approval of planning permission.

The applicant has liaised with both Derbyshire and Nottinghamshire County Highway authorities and the BDC because of the site's geography and the potential cross-border highway impacts arising from it.

Should planning permission be forthcoming, it is expected initially there would be a temporary adverse impact on the road network due to traffic generated by the reclamation works. This could be mitigated by routing construction

traffic to avoid HCV movements along Southfield Lane, Station Road and Green Lane that would have an impact on Whitwell and Hodthorpe villages, in favour of routing towards the A60 via Craggs Road and the B6042 Hennymoor Lane. Other measures to limit potential adverse effects include wheel washing, avoidance where possible of movements during peak and anti-social hours, and speed limit reductions (as proposed for non-construction traffic), to be covered by the CTMP planning condition.

In conclusion, the potential effects of the reclamation works on the local road network have been considered and, whilst the proposed development would add traffic flows to Southfield Lane, traffic flows on this highway link are not considered to give rise to any operational capacity concerns. The baseline environment surrounding the Creswell Craggs Heritage Centre is stated to remain unaltered having no negative impact.

The TA concludes that a change to the road network, associated with the development, would result in a slight increase in delay to road users, within the range of daily traffic variations, and junction reserve capacities would still be adequate for normal operation. The applicant concludes that cumulative impacts of the development are not severe and a sustainable development is achievable, both of which accord with the guidance contained within the NPPF.

The Highway Authority has considered the highway implications of the proposed development and raises no objections to the proposal subject to planning conditions relating to access, visibility splays, traffic routing and a CTMP.

It is therefore considered that, subject to compliance with appropriately worded planning conditions, the proposal, in terms of traffic and highway impact, is considered to comply with policies MP1, MP4 and MP5 of the DDMLP and paragraphs 108 and 109 of the NPPF.

## **Noise**

Noise impacts are considered to be a material planning consideration in the determination of this application. The ES considers the impact of noise. A noise assessment has been undertaken by the applicant which establishes existing noise levels at the site and at neighbouring noise sensitive locations. The assessment make predictions of the likely sound levels from the reclamation and construction works on nearby sensitive receptors and takes into consideration the impact of traffic noise. Existing ambient background sound levels at the nearest noise sensitive receptors range between 48 to 55 LAeq,T (dB(A)). The combined (un-mitigated) construction sound levels at the nearest sensitive receptors are predicted to be up to 86 LAeq,T (dB(A)). The highest sound levels tend to be associated with plant that would be employed during earthmoving and concreting. The assessment goes on to consider

mitigation measures and considers that with the implementation of 'best practicable means' (BPM) the sound levels can be reduced to the threshold limit of 55dB LAeq,T. The assessment also considers the noise impact upon Creswell Craggs and concludes that the reclamation works would not increase existing daytime sound levels at the Craggs site.

BDC's Environmental Health (EHO) has raised some concerns regarding noise as referred to above under the consultation response.

The EHO notes that the assessment of noise identified a significant impact on a range of locations and that the assessment concludes that these impacts can be mitigated to acceptable levels. However, the EHO has a number of concerns regarding the assessments that have been made as the existing noise levels appear to be high for the type of environment that is assessed in some locations. In addition, there are some isolated properties that do not appear to have been considered at all within the assessment that are likely to have significant impacts due to the existing low background levels. These cottages are at Millash Lane and two cottages, Doone Cottage and Meadowlands that are shown as sensitive location 4 do not then feature further in the assessment. No background monitoring was undertaken in these locations.

With respect to the current noise predictions, the calculated noise levels are significantly higher than 55dB(A) LAeq which is what would be expected for this type of development and the time period that the reclamation is likely to take. The noise assessment acknowledges this but states that noise levels would be acceptable due to the use of noise mitigation measures. This is stated as being extremely general and, whilst mitigation measures can and should be used, the EHO would be looking for something more detailed to demonstrate that noise levels can be reduced to acceptable levels as quite substantial reductions would be required in places.

At this stage, the EHO is unclear whether parts of the reclamation are still likely to be on-going when the construction phases start so there may be a need to carry out assessments of the cumulative aspect.

Therefore, at this stage, the EHO does not have sufficient information to determine whether the noise levels are likely to be acceptable and significant mitigation is likely to be required that may be challenging.

However, despite these concerns, the EHO, as a statutory consultee regarding noise matters to the County Council, is satisfied that noise can be controlled via planning condition (see below for draft suggested condition regarding noise combined with air quality and dust). If Members are minded to approve this application, officers consider that there are no substantive

concerns or reasons why noise cannot be addressed through the CEMP, as suggested by the EHO.

It is therefore considered that, subject to compliance with appropriately worded planning conditions, the impact of noise would comply with policies MP1 and MP3 of the DDMLP and paragraphs 170, 180, 204, 205 of the NPPF.

### **Ecology and Nature Conservation**

The applicant has submitted an Ecological Impact Assessment as part of the ES. This has been informed by a suite of ecological surveys and appraisals undertaken over a number of years. These have included habitat surveys of the tip site and adjacent areas of land included within this application, surveys and assessment for protected and notable species, and update ecological surveys to ensure this application is based upon sufficiently up-to-date information. I have consulted with the County Council's Ecologist who is of the opinion that the site has been subject to an appropriate ecological survey and assessment process.

The ecological surveys found that the site supported a broad variety of habitats, which included significant areas of woodland (including broadleaved and plantation woodland) and scrub; hedgerows; neutral, marshy and calcareous grassland; water and wetlands, and arable fields. Whilst some of these habitats were judged to be of ecological interest, surveys found no evidence for the presence of badger, otter or water vole, great crested newts or reptiles. The site was, however, found to be of value for breeding birds, and certain invertebrate species, particularly butterflies.

The Ecological Impact Assessment confirmed that the development would have a significant adverse impact on the habitats present on site as well as the species found there, due to earthworks and land forming which would take place across the tip and which would necessitate the removal of habitats in areas where those works occur. Whilst efforts have been made to retain habitats where possible, the vast majority of habitat losses would be unavoidable, if the tip reclamation is to be undertaken.

Whilst many of the habitats on site would be unavoidably destroyed by the proposals, the applicant intends to mitigate this impact through habitat retention and translocation where this is possible, and to compensate for the remaining impacts by restoring much of the site, especially around the tip area, to include a variety of created habitats of ecological value. The Ecological Impact Assessment proposed that these would include species rich grasslands and other open habitats, as well as woodlands and wetlands, and that overall, the scheme would be beneficial for biodiversity.

During the initial planning consultation, the County Council's own Ecologist raised a number of concerns including, amongst other things, that whilst the application provided information setting out the principles of ecological mitigation and compensation, it lacked a sufficiently detailed site restoration plan and/or figures quantifying habitat losses and gains. The application had therefore failed to demonstrate that ecological compensation measures were adequate and acceptable to fully offset the ecological harm caused by development or provide a net gain in the longer term.

DWT raised similar issues in its consultation response, requesting additional details of the approach to the ecological mitigation hierarchy, site restoration, subsequent management, and additional information to demonstrate no net loss of biodiversity. DWT also suggested that further ecological survey work was required although, upon further consideration, the County Ecologist considers this unnecessary. EMBC also raised concerns about the impact of the proposals on important butterfly species, and the need to ensure that the site restoration provided a net gain for those species in the longer term.

In response to those and other concerns, the applicant made a submission of additional information which included a number of documents. Of relevance to ecology, these included a revised Landscape Masterplan, a 'biodiversity metric calculation' and an accompanying Technical Note.

The Biodiversity Metric Calculation is an assessment exercise undertaken using a standardised, recognised methodology to assess the biodiversity value of a site in its current state, and as it should be following development and site restoration. In this instance, the calculations demonstrated that whilst the habitats on site have an existing ecological value, the restoration proposals should, when assessed using the same methodology, deliver a small net gain for biodiversity. Whilst the area of land occupied by ecologically valuable habitats is the same after development as before, this net gain is achieved by increasing the 'distinctiveness' of the habitats (i.e. by reinstating habitats of higher biodiversity interest) on site following development, and by improving the 'condition' of those habitats, by ensuring they are positively managed. These points are important because they demonstrate that whilst the existing site has significant ecological value, much of which would be lost to development, this impact could be satisfactorily addressed upon site restoration only if high quality habitats are successfully created and established as compensation, and managed appropriately in the longer term. It is therefore recommended that a detailed planning condition requiring the submission of and implementation of a Landscape and Ecological Management Plan (LEMP) and a legal agreement should be imposed in the event that planning permission is approved for the development.

Whilst the biodiversity metric calculations demonstrate that a biodiversity net gain can be achieved in the long term, the Technical Note also includes site

plans which show how these habitats could be configured and accommodated on site. The revised landscape masterplan also show how these habitats would be incorporated into the site restoration, and I am therefore satisfied that the quantities of habitats used in the biodiversity metric calculations could realistically be accommodated on site, and therefore that the mitigation proposals are both acceptable and achievable over a 20 year period. It is, however, recommended that a 25 year management period is secured for all habitats, in order to safeguard biodiversity compensation measures, as well as maintain public amenity for an appropriate period. The applicant has agreed, in principle, to long term management at the site. Whilst the level of detail provided in the Landscape Masterplan is considered appropriate and proportionate at this stage, and sufficient to demonstrate that the required levels of ecological compensation can be delivered, the provision of finer details and long term management prescriptions could be secured by planning condition, through the production of a detailed LEMP as discussed above.

In response to the consultation on the submission of additional ecological information, DWT welcomed the submission of the biodiversity metric calculations and the revised landscape masterplan. Nevertheless, DWT has chosen to maintain its holding objection, citing concerns that the revised masterplan does not yet fully satisfy the requirements of all parties. Amongst its concerns, DWT refers to the configuration of open habitats adjacent to woodlands, the nature of grassland creation in certain areas, the possibility of retaining a hedgerow or re-routing a permissive footpath and the need to secure long-term habitat management across the site.

I have given these matters detailed consideration and I do not consider these concerns as sufficient to merit delaying determination of the application. It must be recognised that the submitted landscape masterplan is, by necessity, a plan which provides an overview of site restoration and habitat delivery, rather than providing full details at this stage. Consequently, we would anticipate that some matters would be addressed through the provision of additional more detailed plans after the grant of permission.

Furthermore, it must also be recognised that the reclaimed site would need to fulfil the requirements of multiple interest groups, including providing an appropriately restored site from a landscape and visual impacts perspective, and providing access and recreation opportunities, as well as providing habitats of ecological value. With regards to the open mosaic habitats for example, it is acknowledged that there are conflicts between open habitats and trees and woodland, and that open habitats might benefit from a reduction in woodland cover. However, it is also recognised that the woodland component here is multifunctional, and is also required as part of the landscape strategy to assimilate the site into the surrounding area once the works are completed. Consequently, whilst it would be inappropriate to modify the restoration proposals at the expense of other interests, I am satisfied that

the current masterplan proposals show a reclamation scheme that is broadly acceptable to all stakeholders, but which could benefit from some minor refinement to maximise the benefits provided. As a result, I consider the submitted landscape masterplan to be acceptable in principle, subject to minor enhancements following determination which can be secured through the submission of a LEMP.

In summary, whilst DWT's concerns are noted, any issues that remain are considered to be able to be addressed through planning conditions or legal agreement or both. Accordingly, there is not considered to be any need or merit in delaying determination of this application further whilst the concerns raised are addressed prior to determination.

The application proposes the production of both a CEMP to provide details for ecological and environmental protection measures required during the reclamation and construction phases, and a LEMP, to include management prescriptions for retained, translocated and created habitats during and beyond the construction phase. I am satisfied the use of conditions securing the production of those documents to cover the aforementioned matters (for approval prior to implementation), is necessary and appropriate in these respects.

Having considered the above, the most significant outstanding matter is the longevity of management of the site post-restoration. As highlighted above, given that the site holds some significant ecological value which would be substantially affected by the proposals, the ecological acceptability of the development is dependent upon the satisfactory restoration of the site to deliver habitats of ecological value, and the retention of those habitats and their value for the longer term. Given that the Biodiversity Metric calculations have assumed for some habitats a biodiversity value which would take over 20 years to be achieved, and given that other habitats would decline very rapidly without annual management, it is considered that an extended management period of 25 years is an essential component of the proposals, if they are to be considered acceptable. This is a matter that is recognised and, as such, would form part of a legal agreement should planning permission be approved.

Subject to compliance with an appropriately worded planning conditions and legal agreement, regarding ecology and nature conservation, the proposed development complies with policies MP1, MP3, MP4, MP6, MP10 and MP15 of the DDMLP and paragraphs 175 of the NPPF.

Having considered the proposals along with the concerns raised by EMBC, and DWT, and subject to approval of a CEMP and LEMP, along with an extended management period via a legal agreement, then there are no objections regarding ecology or nature conservation. It is also noted that



Natural England, as a statutory consultee, has not objected or raised any concerns regarding the application.

### **Arboriculture**

The ES is accompanied by an Arboricultural Survey which has determined the condition of trees across the site. Whilst trees are a material consideration where protected, it is accepted in arboricultural terms that trees rated categories C or U in their condition are excluded from consideration and retained only where they create no restraint upon development.

Tree cover across the site is assessed as low and of unremarkable quality. Their condition or merit is such that they can only offer minimal landscape screening benefits, and be reasonably considered to be removed.

The initial Masterplan for the site included a significant amount of newly planted trees on all sides of the existing colliery tip. Many of these were proposed to be planted during the course of this development to allow tree growth in advance of the mixed-use development proposed. This is likely to offset the loss of trees that would be felled during the course of the reclamation works. A mitigation scheme has been recommended in the Arboricultural Survey which would seek to protect trees that are being retained while works are under way.

However, given that the landscape masterplan is indicative and that the final version is yet to be agreed via a LEMP, then it is accepted that the concerns regarding tree planting can be addressed at this stage post decision.

It is therefore considered that, subject to compliance with an appropriately worded planning condition and legal agreement regarding aftercare, ecology and nature conservation the proposed development complies with policies MP3, MP5 and MP6 of the DDMLP and Paragraph 170 of the NPPF.

### **Geology, Ground Conditions and Contamination**

The ES states that existing site ground conditions, including geology and contamination, have been assessed over many years, initially using a desk based Environmental Risk Assessment (ERA) and then through additional Earthworks Strategies, Coal Authority Reports and onsite testing. The initial ERA looked at the historic uses of the site and surveyed the ground, to determine whether conditions are suitable for construction and if any contamination is present that would cause harm during construction and/or for the future residents and users of the site.

The applicant states that the proposed development would make the land suitable for residential and employment use, alongside recreational and other uses. It would involve a cut and fill operation on part of the former colliery spoil tip. Material from the tip would then be reused across the site in creating a

plateau suitable for the development set out in the outline mixed-use proposal, together with landscaping bunds; meanwhile any topsoil extracted would be used for residential gardens where tested as suitable (this is referred to below in more detail). The site has been appraised for gas and the Coal Authority confirms there would be no such impacts.

During the construction phase, it is stated that dust control measures would be in place, as would measures to limit pollution of controlled waters.

Overall, the impact upon ground conditions is stated as being positive, since where contamination is identified it would be investigated and resolved, thereby minimising the risk of contamination in the longer term. Construction methods specifically intended to resolve risks associated with ground conditions, geology and contamination would be put in place across the site and can be controlled by planning condition.

BDC's EHO has advised that several studies have been carried out over a number of years to establish the level of contamination throughout the site. The EHO notes that there are two agricultural fields where residential use and public access land are intended. The EHO considers that the use of residential assessment criteria for land that is intended to be publicly accessible would not necessarily be appropriate as the potential exposures within that land use would differ significantly. However, there has been some lead, cadmium and zinc identified within those areas. BDC was informally consulted in 2017 regarding the lead contamination and at that stage did not agree that it could be concluded that the levels were as a result of background naturally occurring lead. There is also considered to be insufficient bio-accessibility testing included within the reports to carry out a DQRA on that basis. The report submitted states that the lead is likely to be suitable to remain within garden areas. However, subsequent reports available with the DCC application have concluded that the levels of lead identified would not be suitable to be left within garden or landscaping areas without some form of cover system. The EHO does not disagree with this conclusion. Therefore, at this stage, it is considered that further studies for each individual area would be required to further refine the risk assessments that have been carried out and allow remediation strategies to be developed.

It is therefore considered that, subject to compliance with an appropriately worded planning condition regarding ground conditions and any contaminated land in accordance with the advice of the BDC EHO, the proposed development complies with policies MP1, MP3, MP10 and MP15 of the DDMLP and paragraphs 179 and 180 of the NPPF.

### **Air Quality and Dust**

Air quality and dust impacts are considered to be a material planning considerations which should be considered having regard to policies MP1 and

MP3 of the DDMLP and paragraphs 103 and 205 of the NPPF. The ES includes an air quality and dust assessment which assesses the baseline conditions currently existing at and in close proximity to the site. The potential direct and indirect effects of the proposed development are discussed, together with details of the mitigation measures required to prevent, reduce or offset the effects. Finally, the residual effects on air quality accounting for the implementation of mitigation measures are described.

The EHO considers that a limited dust assessment has been carried out and submitted for this application and that there is likely to be a significant issue relating to dust unless appropriate mitigation measures are put into place. However, it is considered that this can be satisfactorily dealt with by conditions. If planning permission is granted, it should be conditioned that a more detailed dust assessment should be carried out for both the reclamation and construction phases and a construction management plan developed for each phase that identifies the appropriate mitigation measures for dust, vibration and odour including a suitable methodology for responding appropriately to any complaints that are received. This should include a commitment to temporarily suspend works if justified until a suitable solution is identified to mitigate any unacceptable impacts.

Therefore, in accordance with the recommendations of the EHO a condition for a CEMP (which includes dust management) should be attached to any planning permission granted.

It is therefore considered that, subject to compliance with an appropriately worded planning condition, the proposal is considered to comply with policies MP1 and MP3 of the DDMLP and paragraphs 103 and 205 of the NPPF. Officers consider that there are no substantive reasons why air quality and dust matters cannot be addressed through a planning condition.

### **Landscape and Visual Impact**

The ES provides an overview of the proposed development and considers the effects on features and characteristics important to the landscape character of the site and its setting, and on visual amenity. A Landscape and Visual Impact Assessment (LVIA) has been undertaken. The site is considered to be a mixture of a former industrialised landscape and an urban-rural transition landscape within an otherwise rural area. The LVIA appraises the site using Derbyshire County Council's Landscape Character Assessment and identifies the site being located within the Southern Magnesian Limestone National Character Area. At a County level, as set out in the Landscape Character of Derbyshire document, it is identified as being within the Limestone Farmlands Landscape Character Type (LCT). Beyond the site, the landscape is characterised by a nucleated settlement pattern, with small villages, set within a rural landscape, which has been impacted upon by modern developments and mining. The existing Whitwell quarry is a dominant feature locally and

visible within the wider landscape. The viewpoints in the LVIA were chosen to represent the most sensitive locations where views are available. In terms of landscape impact, the ES concludes that there would be no significant impacts on landscape character resulting from the proposed development and a negligible beneficial landscape effect is predicted due to changing the uncharacteristic colliery tip to a more characteristic woodland, field pattern and land cover.

The visual impacts have also been assessed and, during the earthworks phase, the overall visual impact during this phase is assessed as 'slight adverse'. The short term reversible nature is considered to be an important consideration in this assessment for this phase of the development. The cumulative landscape and visual impacts with other development and features, such as Whitwell quarry, has also been considered and no significant adverse cumulative impacts are expected.

In general, the judgements of the LVIA are considered to be correct. However, the landscape masterplan for the site has been amended following concerns raised by DWT about the retained and proposed ecology of the site. The amendments include additional notes attached to the Landscape Masterplan (Dwg no 1024 003 M) alongside some modifications to the design as well as a Biodiversity Metric calculation and supporting plan.

From a landscape and visual perspective, the reclamation of the existing tip is challenging with respect to the established landscape character of the wider area primarily as a consequence of retaining a rather artificial and incongruous landform and, as a consequence, some of the proposed amendments are a concern with regard to achieving the landscape and visual objectives of the scheme. The primary means of mitigating the tip is through a strong focus on the creation of a woodland framework to help mask and integrate the artificiality of the final landform, as well as assisting in the integration in other habitat areas. Whilst the latest Landscape Masterplan (Revision M) appears to be similar to the previous iteration, there are changes proposed that need to be very carefully considered in the detail if they are not to have a negative impact on some of the landscape and visual mitigation objectives of the original scheme.

The scheme now proposes to keep more of the eastern and southern tip slopes open as mitigation for existing habitat interest with the upper slopes grading from open scrub to high woodland. This reduction and opening up of the woodland framework is of concern if it is to function as a visual screen to the tip landform and, at the present time, the restoration masterplan is insufficiently detailed to allay these concerns in demonstrating how the transition might actually transpire on site. Opening up of the slope on the eastern flank of the tip adjacent to the proposed wetland area (reference F on the plan) is a particular concern. Water is not a characteristic feature of this

landscape as a consequence of the underlying free-draining limestone geology and earlier iterations of the restoration masterplan provided greater integration of this wetland feature within a more wooded context, that was more appropriate to the wider landscape character, particularly given that this area would be potentially visible from Station Road and Millash Lane. This modest impact on open habitat could be more than compensated for, in my opinion, by making more of the new drainage channel to the south of the wetland area, which would function well as a butterfly/invertebrate corridor connecting with other open habitat along the southern flank of the tip.

It is difficult to appreciate from the plan what exactly is required in terms of ground preparation to deliver 'Open Mosaic Habitat' (OMH), as shown on the revised Biodiversity Metric plan and its extent is a level of detail we have not seen before until this latest submission. Given that OMH in areas A and C on the Landscape Masterplan is proposed to be created through the use of 'rubble' and 'recycled material from the colliery yards', which in all events is likely to be crushed concrete and brickwork, it is my view that the use of the same material for all areas shown on the plan as OMH would not be acceptable from a visual amenity perspective, which would necessitate the need for a revised landscape masterplan. This proposal is intended to deliver the comprehensive reclamation of an otherwise incongruous landscape feature for the benefit of communities adjacent to the site and for wildlife.

In this context, the current Landscape Masterplan is acceptable as an 'indicative' scheme subject to being substantially amended in its final form through conditioning to better integrate both landscape and ecological matters. The production of a LEMP, supported by a more detailed interpretation of the masterplan redressing the above concerns from a landscape and visual perspective, would be the mechanism for doing this. I am also of the opinion the final scheme should also be supported by an extended management period, implemented through a legal agreement. Given the nature and diversity of the habitats for a period of 25 years, particularly given the importance of woodland in achieving landscape integration and visual mitigation.

With this in mind and the fact that the reclamation of the Whitwell Colliery tip site would be a significant local gain, by the removal of the historic coal mining legacy in the area, then it is considered that the securing of a LEMP via planning condition and an extended management period by legal agreement would be an appropriate solution for the final restoration design of the site.

In respect of landscape and visual impacts, the proposal subject to the above is considered to comply with policies MP1, MP3 and MP10 of the DDMLP and paragraphs 103 and 205 of the NPPF.

## Heritage and Archaeology

Chapter 15 of the ES assesses the impacts of the proposed development on the historic environment. Both the archaeological and cultural heritage of the site has been assessed through desk based reports, geophysical survey and site visits. The key heritage assets investigated as part of this process include both the Whitwell and Belph Conservation Areas, any relevant listed buildings, buried and above ground archaeological remains and historical site records.

The ES identifies both short term (Constructional and operational) and longer term impacts on the heritage assets resulting from the development. These are assessed as follows.

### Historic Landscape Characterisation

The proposed development would primarily change the landscape of the industrial areas to one of settlement (including light industrial) dominated by the restored mineral waste tip which would become amenity ground.

The small regular fields to the north of Station Road would also be altered to one of settlement. The zone of large fields adjacent to Penny Green would largely remain the same, although may have an associated recreational usage. Some elements of the historic landscape would be retained, comprising mainly field boundaries. There would remain a visual impact on the setting of adjacent landscapes. This is considered to be moderate and beneficial.

### Scheduled Monuments

Three scheduled monuments were considered as part of the assessment to determine if they or their wider settings would be affected by the proposed development.

The nearest Scheduled Monument to the Site is Creswell Crags, a limestone gorge with caves containing evidence of some of the earliest human occupation spanning the Middle and Late Upper Palaeolithic.

The Scheduled Monument is co-terminus with the designated Creswell Conservation Area, Welbeck Abbey Registered Park and Garden and SSSI. The significance of the monument is heightened by its inclusion on a list of tentative sites to be assessed for World Heritage Site status.

The assessment states that there would be no visual impact from the top of the cliffs of Creswell Crags where views from the visitor centre and car park looking towards the Site are masked by the tip to the south of the Site, as well as areas of plantation along Crags Road and that there would be no direct impact on Creswell Crags during the construction phase of the development. There may, however, be an indirect impact through vibration from increased traffic along Crags Road (B6042).

A supplementary section also has been prepared and submitted which consider the potential noise impact of the proposed development upon the Creswell Crags site.

A smaller limestone gorge, Burntfield Grips, to the west of Whitwell contains the second Scheduled Monument of Ash Tree Cave. The ES considers that there would be no impact on Ash Tree Cave during the construction phase of the development.

Markland Grips, 2km west of the Site, is an Iron Age promontory hillfort. No impacts are assessed on this historic asset.

Once the development is operational, the impact on the three Scheduled Monuments is considered to be neutral. There may be a beneficial impact on Creswell Crags through increased footfall to the visitor centre. The significance of Creswell Crags, as demonstrated by its application for World Heritage Site status, would be unchanged.

#### Conservation Areas

The proposed development area lies adjacent to Belph Conservation Area which incorporates Penny Green.

The colliery tip currently provides a backdrop to Belph in views travelling west along Station Road. As such, it is assessed that there would be a visual impact on the Conservation Area during the period the tip is remodelled and topsoil stripped from the adjacent fields. However, this impact would be temporary.

The Whitwell, Creswell and Holbeck Conservation Areas was are also considered in the assessment but no impacts are identified

The ES states that in the longer term, Belph Conservation Area may suffer a slight adverse impact through increased traffic between the Site and the A60 along Station Road. However, there would be a moderate and beneficial impact from the conversion of the colliery tip allowing viewing opportunities and pedestrian access for leisure users. Whitwell Conservation Area may also experience a slight impact from increased traffic from the Site northwards. It is assessed that there would be no impacts on the Creswell Conservation Area and Holbeck Conservation Area.

#### Listed Buildings

No listed buildings would be directly affected by the proposed development.

The conversion of the colliery tip would provide new viewing opportunities of some Listed Buildings, including the tower of St Lawrence's church.

### Registered Park and Garden

The registered park and garden of Welbeck Abbey was designed by Francis Richardson and Humphrey Repton during the 18th century. It encompasses some 1,140ha of arable, park and woodland and is centred on the Abbey, the registered area also includes Creswell. The ES concludes that the development would have no direct impact upon Welbeck Abbey Park. Any residual impacts that would remain would be largely neutral whilst viewing opportunities towards the parkland would be obtained by amenity users of the landscaped colliery tip which is assessed as being moderate and beneficial.

### Archaeology

Potential buried archaeological remains would be impacted upon by the reclamation operations with the potential permanent loss of the remains. This is particularly applicable to the field north of Station Road. The partial removal of topsoil from the field adjacent to Penny Green would also potentially harm the archaeological resource. Mitigation measures for areas assessed as having potential for buried archaeological remains would need to be undertaken before any earthmoving is carried out.

The ES also considers the cumulative impact of the development and concluded that it is unlikely that the proposal would have a cumulative impact on cultural heritage.

The ES concludes that the reclamation scheme, while introducing temporary localised effects and some disturbance, would present little harm upon heritage assets including their significance and setting. With respect to archaeology, deposits of interest are limited to former mill workings on the outer edges of the colliery tip area, but predictably with a former colliery site, industrial activity has disrupted potential archaeology over the years. The reclamation scheme would not cause undue harm to any such remaining assets.

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires that in the determination of this application that '*special attention*' is paid to '*the desirability of preserving or enhancing the character or appearance of a conservation area*'.

The Government policies concerning heritage assets and these statutory requirements are now contained in the 2019 NPPF at paragraphs 189-202. Paragraph 190 of the NPPF expects local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage assets conservation and any aspect of the proposal.



Paragraph 193 states: *“when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be, total loss or less than substantial harm to its significance.”*

Paragraph 196 of the NPPF states that *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”*

Paragraph 199 of the NPPF states that local authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

Policy MP4: Interests of Acknowledged Environmental Importance seeks to safeguard the environment and prevent irreparable or unacceptable damage to interests of acknowledged importance, including conservation areas, archaeological remains, and historic parks and gardens, and their settings. Policy MP7: Archaeology – Mitigation Measures of the DDMLP states where proposals for mineral development would affect areas of known or potential archaeological importance, the mineral planning authority will require the submission of an archaeological evaluation and impact assessment and, where appropriate, mitigation proposals, prior to determining the application. Where such mineral development is permitted the authority will impose conditions or seek planning obligations to preserve features in situ where this is appropriate, and to secure appropriate archaeological investigation and recording prior to, and during, development.

BDLP Policy CON4 states that *“development adjacent to a conservation area shall preserve or enhance the special character and setting of the conservation area. Planning permission will not be granted for proposals which would have a detrimental effect on the special character or setting of the conservation area including views into or out from the conservation area.”*

Whilst there are no known designated heritage assets on the application site itself, there are a number of designations in the wider area that have the potential to be impacted on by the proposed development; namely the Whitwell and Belph Conservation Areas and potentially Creswell Crags.” The development site at its eastern tip, near to Penny Green, is in close proximity to the Belph Conservation Area. The Belph Conservation Area is an attractive rural hamlet which retains the rural character of a farming hamlet, the surrounding agricultural land does contribute to its character and its setting.

The proposal would result in a permanent change of this part of the site from agricultural to amenity land and water, and this would potentially impact on the significance and setting of the Conservation Area. I am of the view that the change in the landform would represent a change to the setting of the Conservation Area and has to be considered as harm in the rural agricultural surroundings. However, the degree of harm from this change, together with the potential transitional impacts identified above, would amount to less than substantial harm.

The development also has the potential to impact on archaeology within the Site. It is acknowledged that the majority of the site has very limited archaeological potential due to the former colliery and spoil tip uses. Any surviving archaeological remains would be buried within its footprint, for example in relation to the post-medieval Belph Mill and its millpond in the central part of the site. No significant built heritage elements of the late 19th-early 20th century colliery have been identified within the site.

Archaeological potential is restricted to peripheral areas of the site outside the footprint of the former colliery and tip, comprising two fields to the north of Station Road, and a further two fields at the eastern end of the site north of Millash Lane at 'Penny Green'. The larger of these northern fields, and the 'Penny Green' area, have been subject to geophysical survey.

The geophysical results showed some potential archaeological remains, close to the eastern end of the site and this should be subject to further archaeological investigation and recording.

In addition, the Derbyshire Historic Environment Record identifies a locally distinctive stone stile of 19<sup>th</sup> Century date (MDR12122) at Doone Cottage on the site's northern boundary. This should be retained as part of the site's boundary treatment.

Whilst some assessment work has been undertaken, based on the information provided to date, there is still a need for a detailed investigation to be undertaken regarding archaeological interests that may exist on part of the site which has not previously been disturbed by mineral tipping and engineering operations.

The applicant has provided a WSI and an updated trench plan, as further information to support the application. However, it is considered that the WSI should contain further detail. It is also recommended that the proposed two phase scheme of archaeological investigation should be programmed within the overall scheme and be included in the CEMP

In respect of the heritage assets, the proposal would result in less than substantial harm to the character of the conservation areas and the Creswell Crags scheduled monument. Once the development is complete, this impact would be reduced, however, there would be a permanent impact on the character of the Belph Conservation Area through the loss of agricultural land in its setting. The reclamation and redevelopment of this site would result in significant public benefits (considered further in the section below on socio-economic benefits) which, in my opinion, should prevail over the harm to these assets. The development has the potential to impact on archaeology within the site, however, subject to the recommended planning conditions, in relation to further archaeological investigation, there are no archaeological objections to this proposal. It is therefore considered that, subject to compliance with appropriately worded planning conditions any heritage and archaeological impact is considered to comply with policies MP1, MP3, MP4 and MP7 of the DDMLP and paragraphs 189 to 202 of the NPPF. However, there would be a degree of conflict with Policy CON4 of the BDLP in that a degree of detriment to the setting of the Belph Conservation Area is apparent.

### **Socio-economic Change**

The ES states that the socio-economic characteristics of the local area were studied using national Census data, neighbourhood profiles and other records from the Office for National Statistics (ONS). This identified that Whitwell is one of the larger villages in the Bolsover District, with a population of approximately 3,900 (2011 Census).

The development would enable the development of housing and employment opportunities in close proximity to each other and to existing employment opportunities, with good access onto the highway and rail networks and close to recreational and tourism opportunities. The applicant considers this is an advantageous location for economic growth.

Reclamation of the derelict former colliery site would contribute to the continued regeneration of the village and District as a whole, as it continues to address issues associated with the legacy of former mining activities. The applicant claims that the physical and environmental benefits brought forward by proposed developments are likely to enhance the attractiveness of Whitwell, helping to attract new residents and businesses.

The reclamation scheme, the subject of this application, is stated to stimulate temporary job creation, inward investment and increase the footfall of certain local amenities, albeit temporarily.

Overall, it is considered that the long term benefits stated above would outweigh any short term (whilst being worked) disbenefit relating to traffic, noise and dust, ecological impacts that may occur and any prevailing heritage and archaeological impacts. Subject to the environmental impacts being

satisfied, then the socio-economic aspect of the development is strongly supported by the NPPF.

It is therefore considered that the socio-economic benefits contributed by the reclamation of the colliery tip and provision of platforms suitable for development in accordance with the emerging local plan is in compliance with policies MP1, MP3, MP4 of the DDMLP and paragraphs 8, 38, 67, 72, 92, 93 and 193 of the NPPF.

### **Agriculture and Soils**

The application site includes land north of Station Road which appears not to have been used to store mineral waste associated with Whitwell Colliery. The land is currently used for agricultural purposes and does not form part of the former colliery site, however, according to historical maps, there is history of part of this site being quarried.

The applicant has stated that use of some of the soils from the land to the north of Station Road which is to be stripped, is necessary to provide clean cover for the proposed open space and landscaping on the former colliery site, as well as residential gardens as on Phase 1A of the site. The application indicates that any shortfall would need to be met through the importation of soil. The imports of soils to the site can be controlled through planning conditions as recommended below.

The ES states that the agricultural and soil quality of the site was investigated through ground investigations and surveys of the agricultural businesses that use the site. The land north of Station Road is in arable agricultural use. It is noted above that Natural England has not raised concerns regarding the loss of agricultural land.

Whilst the reclamation of the site would result in the loss of some of the most versatile agricultural land through the stripping of topsoil north of Station Road, this would only be a proportion of the development site and some of this land would be used as part of the landscape strategy and ecology as land for amenity purposes. The removal of this land from agricultural use is a consideration of the planning process; however, the proposed development has been identified as having significant social and economic benefits, which in the assessment of planning balance are considered to outweigh the loss of this land from agricultural use.

In light of the proposed strategic site allocation for this area in the emerging local plan, and subject to the recommended conditions, I am satisfied that the development, in terms of its impact on soil resources and agricultural land, would comply with Policy SS6 of the emerging Bolsover local plan, policies MP1, MP3, MP4 and MP10 of the DDMLP and paragraphs 170 and 171 of the NPPF.

## Water Resources

The water resources on the colliery site were surveyed extensively during the course of preparing the application, the results of which are provided in the ES. As ordinary watercourse 'Millash Brook' flows through the site, partly in culvert beneath the southern edge of the former colliery tip.

It is expected that site drainage must provide capacity for the development scheme, must not cause flooding or increase the risk of flooding elsewhere. It must also require that the rate of surface water runoff does not increase compared to the existing greenfield rate.

Currently, there are areas on the surface of the site that collect water which results in the formation of perched water which in the winter overflows and discharge to the watercourse causing erosion and picking up contamination from the mine-waste. The design concept for the re-shaped tip is to establish a new landform where there would be no standing water. The final surface would be compacted to inhibit the ingress of water in to the ground and covered with soil to establish vegetation. Limestone drains would be established where steeper slopes cannot be avoided to collect the water and prevent erosion of the soil layer and underlying mine waste layer. The applicant states that this is a tried and tested strategy used for many years in the landscaping of former mine-waste tips and has resulted in a significant improvement in the water quality of surrounding water courses.

The outline surface water design principles provided in the Flood Risk Assessment (FRA) and Drainage Assessment Report (February 2018), would be developed and agreed with the LLFA as part of the compliance with an appropriately worded planning condition. The site drainage system should mitigate pollution of soils and groundwater underlying the site. The proposed surface water strategy is based on providing a Sustainable Urban Drainage Systems (SUDS) design as per the guidance as set out within The SUDS Manual (CIRIA 697) (CIRIA, 2007).

There is a potential that earthworks and construction works could increase the potential for contaminant migration to the underlying groundwater due to accidental spills and leakages from construction activities and storage of materials (including soil stockpiles, chemicals and fuels). The sensitivity of the underlying groundwater is considered to be high due to its classification as a Secondary Aquifer. The applicant considers that the severity of any spill would result in a slight magnitudinal impact. The overall significance of this impact is stated to be a minor adverse, direct, short term and temporary, which is not considered to be significant. BDC's EHO or the EA have not raised any objections subject to planning conditions.

It is noted that the development site is not in an area of particularly acute risk of flooding; the extent of flooding is confined to along the Millash Brook/Millash

Lane corridor, towards Belph. As part of the proposed drainage strategy, significant investment in local drainage infrastructure would be brought forward. The existing culvert that runs from Whitwell Village into the site is at risk of collapse and the proposal is to cap and fill this and create a new diverted open watercourse along the northern edge of the colliery tip, to a new drainage basin at Penny Green. This basin would provide capacity for the development, take water flows from the site, the village and off the tip, and also provide future reserve.

The onward flows along Millash Brook would be controlled so that only a certain amount of water discharge into the brook is allowed at any one time, with the basin retaining more water during periods of high rainfall. The intention of this is that the Millash Brook/Millash Road corridor would be better protected from flood events in future.

Additional drainage basins would be included to the east of the residential land parcels north of Station Road and in the employment area off Southfield Lane. Aside to being a visually attractive, recreational feature, these basins would provide storage capacity for the specific parts of the development they would serve.

The proposals for combined sewerage would include a new pumping station and rising main on site which, combined with the drainage diversions and new basins referenced above, provides much improved pumping capacity locally. The proposed pumping station would be located next to the drainage basin north of Station Road, while the rising main would be located at the point at which the current culvert meets with the edge of Whitwell Village, near to the proposed railway station improvements, neighbourhood shop and play area.

Foul sewage would be coordinated through a series of new piping locations throughout the development, leading to the existing Millash treatment works. A representation of the proposed foul sewer network is included in the drainage strategy plan with the development stage application, but it would be directed along Southfield Lane towards the Millash Treatment Works.

The FRA has concluded that the reclamation scheme, in providing the above measures prior to the completion of "*The Outline Scheme*", would provide improved flood risk mitigation and drainage measures such that there would be no increase in the risk of flooding to other properties as a result of the outline scheme, and that the new homes, employment opportunities and other uses would be suitably protected from the risk of flooding.

It is acknowledged that the outline application for mixed-use development would control the detail of the drainage proposed, it is nonetheless relevant that this development considers the principles of the future drainage and water regime on the wider site as a whole. The applicant has had detailed

discussions with the LLFA and, in its consultation response, has raised no objections subject to planning conditions and informative notes.

It is therefore considered that, subject to compliance with appropriately worded planning conditions, then any flooding and drainage matters is considered to comply with policies MP1, MP3 and MP4 of the DDMLP.

### **Planning Obligation**

Planning obligations are legally binding obligations under section 106 of the Town and Country Planning Act 1990 which run with the land.

They can be entered into via an agreement between the local planning authority and the person(s) with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land.

Planning obligations should not be used if a planning condition can be used to the same effect. In this case, a planning obligation is considered to be required to be entered into in respect of the application site for the development to be fully acceptable, to provide for:

- 1) 25 years of management of landscape and ecology management of the site in accordance with an approved LEMP.
- 2) Permanent retention of those areas of the site to be managed under the approved LEMP for the purpose of continuing to provide amenity through landscape and biodiversity provision, and
- 3) The dedication by the landowner(s) as a public right of way of any permissive path created in accordance with the application or the Landscape Masterplan that the Council notifies to the landowner(s) as requiring to be so dedicated.

The submission and performance of a LEMP can only be provided for through conditions to which permission is subject during the carrying out of the development and/potentially up to 5 years, following a restoration, to provide for ongoing use for amenity/agriculture and/or forestry. A LEMP providing for actions over a period of 25 years, as is needed in this case to complete the creation over areas on the site of the kind of landscape and ecological benefits envisaged in the Landscape Masterplan (and other documents) submitted in support of the application therefore needs securing by planning obligation requirement, in addition to any planning condition which is imposed in respect of the LEMP.

The second obligation requirement above is needed to help to ensure that the areas of the site which are dedicated to providing landscape benefits and biodiverse habitats including grassland and woodland under the LEMP remain reserved for this amenity use beyond the timescale of the LEMP.

The third obligation requirement relates to the Landscape Masterplan submitted with the application, which envisages a final landform for the application site which will include the creation of footpaths in the application site. This requirement is needed to ensure that the Council has the opportunity to secure as public rights of way whichever of those footpaths it may consider should be dedicated as such.

### **Conclusion**

The restoration of the Whitwell Colliery tip and surrounding land in addressing the consequence of an historic mining legacy in the area is welcomed. I am satisfied that the proposed reclamation details are not unacceptable, subject to controls as set out in the recommended conditions and completion of a suitable section 106 agreement. The landscape restoration would have benefits in the longer term. The proposed scheme would deliver through the on-site reuse the mineral waste, an improved landform, (albeit still differing from the natural surroundings in scale given the quantity of colliery tipped material at the site and generating some less than substantial harm on the conservation areas). The proposal is expected to also provide the basis for future economic benefits in the form of modern housing and commercial opportunities, since the emerging local plan is at an advanced stage. Biodiversity and ecology benefits are also expected.

The site has scope for a range of habitat types and landscaping improvements incorporating the views expressed by DWT and EMBC, and I am satisfied that these details are capable of being agreed by a suitably worded planning conditions should planning permission be granted.

Overall, it is expected that the successful reclamation would contribute to the stated socio-economic benefits by providing the means to facilitate development of housing and employment opportunities in close proximity to each other and to existing employment opportunities, with good access onto the highway and rail networks and close to recreational and tourism opportunities.

Accordingly, it is considered that the proposal, subject to finalised ecological and landscape management and other detailed matters being agreed, which are capable of being controlled via planning conditions and legal agreement, satisfies national planning policy and accords with policies of the DDMLP. Notwithstanding a conflict with Policy CON4 of the BDLP, as identified in this report, the development is considered to be suitable to be recommended for approval as set out below.

**(3) Financial Considerations**      The correct fee of £78,000 has been received.



(4) **Legal Considerations** This is an application under Part III of the Town and Country Planning Act 1990 which falls to this authority to be determined as the Mineral Planning Authority.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being refused as set out in the Officer's Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** File No. 5.255.22  
Application and supporting documents from P&DG received as valid on 5 November 2018. Supplementary and additional information and plans submitted from P&DG.  
Consultation responses from:  
Whitwell Parish Council dated 14 December 2018  
Historic England dated 18 December 2018  
The Coal Authority dated 21 December 2018  
Derbyshire Wildlife Trust received 10 January, 14 January, 12 February and 17 April 2019  
Lead Local Flood Authority dated 10 January and 10 May 2019  
Environment Agency dated 10 January 2019  
Network Rail dated 16 January 2019  
Natural England dated 18 January 2019  
Nottinghamshire County Council dated 21 January and 25 April 2019  
Hodthorpe and Belparish Parish Council dated 18 February 2019  
Highways Authority dated 14 January, 1 February and 29 April 2019  
Bolsover District Council Environmental Protection Officer dated 9 April 2019  
Bolsover District Council dated 17 April 2019; and  
The Planning Casework Unit dated 17 May 2019.  
Letters of representation from East Midlands Butterfly Conservation 20 December 2018 and 19 March 2019.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that planning permission in respect of the application be authorised to be **granted** subject to conditions substantially in accordance with the schedule of draft conditions set out below, with effect from the completion of an agreement between the Council and the land owners under section 106 of the Town and

Country Planning Act 1990 which creates a planning obligation with respect to the application land to ensure that following the development there is (1) 25 years of landscape and ecology management of the site in accordance with an approved Landscape and Ecology Management Plan (2) permanent retention of those areas of the site to be so managed for the purpose of continuing to provide amenity through landscape and biodiversity provision and (3) dedication by the owners as a public right of way of any permissive path created in accordance with the application or the Landscape Masterplan that the Council notifies to the landowner(s) as requiring to be so dedicated.

### **Schedule of draft conditions**

#### **Commencement**

- 1) The development hereby permitted shall be commenced before the expiry of three years from the date of this permission. Written notification of the date of commencement of development shall be sent to the Authority within seven days of such commencement.

**Reason:** To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

#### **Approved Plans and Documents**

- 2) The development shall be carried out in accordance with the following plans and documents:

##### **Documents**

- 1 App form and certificate dated 24 August 2018
- Environmental Statement Parts 2-5 dated 22 January 2019
- Environmental Statement Part 1: Non-Technical Summary dated 23 November 2018
- Supporting Planning Statement dated November 2018
- Statement of Community Involvement dated July 2018
- Ecology Survey dated 17 February 2015
- eDNA Great Crested Newt Survey dated 29 April 2015
- Ecology Surveys Update 2016 dated 2 September 2016
- Technical Note: Biodiversity Metric for Whitwell Colliery ref: 617.05\_04\_TN\_mw\_v2 dated 22 March 2019
- Biodiversity Metric Spreadsheet dated 22 March 2019
- Flood Risk Assessment – Parts 1-3 dated October 2018
- Drainage Strategy Technical Note – LLFA Planning Comments (Waterman) ref: WIE15660-100-R-1-1-2 dated 25 March 2019
- Landscape Visual Impact Assessment dated 20 July 2018
- Landscape Visual Impact Assessment – Appendices A-H dated 20 July 2018

- Landscape Visual Impact Assessment – Appendix J dated 20 July 2018
- Landscape Visual Impact Assessment – Appendices K-L dated 20 July 2018
- Landscape Visual Impact Assessment – Appendices M-N dated 20 July 2018
- Noise Assessment dated July 2018
- Archaeological Desk Based Assessment dated October 2016 and revised April 2018
- Geophysical Survey dated January 2017
- Written Scheme of Investigation for Archaeological Evaluation dated March 2019
- Land at Whitwell Colliery – Desk Study Report dated July 2013
- Phase 1 Site Investigation dated January 2016
- Slope Stability Assessment dated 28 November 2016
- Whitwell Colliery Redevelopment Site Investigation: Addendum 1 dated 28 November 2016
- Whitwell Colliery Redevelopment Site Investigation: Areas 3 and 4 dated 5 June 2017
- Geo-environmental Factual & Interpretative Report dated 5 November 2018
- Coal Mining Review Report dated January 2018
- WHITWELL TIP – Preliminary Earthworks Strategy and Phasing Plan, Revision C dated June 2017.
- Arboricultural Report – Former Whitwell Colliery Site dated September 2017
- Arboricultural Report – Station Road, Whitwell, Derbyshire dated September 2017
- Transport Assessment dated March 2019, Revision F
- Environmental Statement - Appendix – Framework Construction Traffic Management Plan dated November 2018.
- EIA Appendix 1- Whitwell Colliery Site Location Plan.
- EIA Appendix 2- Screening Opinion by Bolsover District Council dated 18 March 2015
- EIA Appendix 5 – Derbyshire County Council Screening Opinion Code No: SCRM/5/104 dated 2 August 2016.
- EIA Appendix 4 – EIA Screening Opinion Bolsover dated 23 June 2017.
- EIA Appendix 5 – Derbyshire County Council Screening Opinion Code No: SCRM/5/119 dated 20 June 2017.
- EIA Appendix 6 – Derbyshire County Council Scoping Opinion Code No SCOM/5/62 dated 9 August 2019.
- EIA Appendix 9.1 – Traffic Data.
- EIA Appendix 9.2 – Receptor Location Plan.
- EIA Appendix 9.3 – Survey Location Plan.
- EIA Appendix 9.4 Survey Results.

- Reclamation Programme: Project 1, Revision C dated 23 May 2018.

### Plans and drawings

- Drawing no. 13.012/27d entitled 'Whitwell Colliery Site Location Plan' Revision D.
- Drawing no. PSS-163-002-003 entitled 'Site Topographic Survey -18 August 2017-'.
- Drawing entitled 'Pla-Updated Survey – Full Site'
- Drawing entitled 'Sewer Record (Tabular) dated 14 September 2015
- Drawing no. 13.012.37d entitled 'Withwell Colliery Reclamation Phase 1' revision D.
- Drawing no. 13.012/40e entitled 'Withwell Colliery Reclamation Phase 1A' Revision E.
- Drawing no. 13.012.38d entitled 'Withwell Colliery Reclamation Phase 2' Revision D.
- Drawing no. 1800251/X/01 entitled 'Withwell Colliery Reclamation Phase 3' Revision F.
- Drawing no. 13.012/41b entitled 'Whitwell Colliery Reclamation Phase 4' Revision B.
- EIA Appendix 7 Drawing No. PSS-163-002-004 entitled 'Proposed Landform Cut and Fill Volumes'.
- EIA Appendix 9.5 Drawing No. 20671\_04\_120\_01 entitled 'Existing External LAeq,16hour Sound Level At 1.5m Height'
- EIA Appendix 9.6 Drawing No. 20671\_04\_120\_02 entitled 'Existing External LAeq, 8hour Sound Level At 4m Height'.
- EIA Appendix 9.6 Drawing No. 20671\_04\_120\_09 entitled '2022 Ds External LAeq,16hour Sound Level At 1.5m Height'
- EIA Appendix 9.6 Drawing No. 20671\_04\_120\_09 entitled '2022 Do Something External LAeq,8hour Sound Level At 4m Height'
- EIA Appendix 9.7 Drawing No. 20671\_04\_120\_06 entitled '2022 Traffic Change DS-DN At 1.5m Height'.
- Drawing no. PSS-163-002-005.2 entitled 'Proposed Landform Cross Sections'.
- Drawing no. 1024 003 M entitled 'Landscape Masterplan' Revision M.
- Drawing no. ARB/3443/Y/100 entitled 'Arboricultural Survey' 'Sheet 1' Revision A.
- Drawing no. ARB/3443/Y/100 entitled 'Arboricultural Survey' 'Sheet 1' dated September 2017.
- Drawing no. ARB/3443/Y/100 entitled 'Arboricultural Survey' 'Sheet 2' Revision A.
- Drawing no. ARB/3443/Y/100 entitled 'Arboricultural Survey' 'Sheet 3' Revision A.
- Drawing no. ARB/3443/Y/100 entitled 'Arboricultural Survey' 'Sheet 4' Revision A.

- Drawing no. ARB/3443/Y/100 entitled 'Arboricultural Survey' 'Sheet 5' Revision A.

Except so far as any elements of the contents of documents and plans listed above are superseded by any requirements of any of the other conditions herewith.

**Reason:** To ensure that the development is carried out in accordance with the details in the submitted planning application and Environmental Statement

- 3) A copy of this Decision Notice and other approved documents (including future approved versions of schemes required by other conditions to which this permission is subject) shall be kept available for inspection at the site offices during the prescribed working hours for the duration of the development.

**Reason:** To ensure that the site operators are fully aware of the requirements of the requirements of the planning conditions throughout the period of development.

#### **Duration of Permission**

- 4) The operations hereby approved (excluding remaining landscaping works) shall cease no later than the date which is the fourth anniversary of the date of commencement of development and the site shall be cleared of all plant, machinery, waste, other stored materials, and other equipment associated with the operations hereby permitted by no later than 6 months from that cessation of restoration operations date.

**Reason:** To minimise the impact on local amenity and in order that the site is restored in an appropriate timescale in the public interest.

#### **Permitted Development Rights**

- 5) Notwithstanding that certain types of development could otherwise be carried out at the site as permitted development under the provisions of the town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no buildings, plant structures, screening and crushing equipment, shall be brought to or erected on the site without the prior written approval of the Authority.

**Reason:** To enable the Authority to adequately control, monitor and minimise the impacts on the amenities of the local area.

- 6) Within one month of the commencement of development a scheme providing details of the location of the operator's site compound, offices

and maintenance and parking areas shall be submitted to the Authority for its written approval. The approved scheme shall be fully implemented during the lifetime of the permission.

**Reason:** To enable the Authority, to adequately control, monitor and minimise the impacts on the amenities of the local area.

### Hours of operation

- 7) With the exception of necessary works arising from emergency situations, no operations under this development shall take place other than between the following hours:
- i) Subject to the provisions of (ii) below 07:00 – 17:00 hours Mondays – Fridays and 08:00 – 13:00 hours on Saturdays and not at any time on Sundays and Bank/public holidays.
  - ii) Vehicles may enter the site no earlier than 7:00 hours Monday - Saturday. The engines of all vehicles entering the site between 7:00 and 7:30 hours must be turned off following entry to the site and no tipping activities or deliveries to take place until 7:30 hours.

**Reason:** To protect the amenity of the area.

### Archaeology

- 8) a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved in writing by the Authority, and until all pre-commencement elements of the approved scheme have been completed to the written satisfaction of the Authority. The scheme shall include an assessment of significance and research questions; and
- 1. The programme and methodology of site investigation and recording
  - 2. The programme for post investigation assessment
  - 3. Provision to be made for analysis of the site investigation and recording
  - 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  - 5. Provision to be made for archive deposition of the analysis and records of the site investigation
  - 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (19 a).

c) The mixed use development platforms shall not be brought into beneficial use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under Condition (19 a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

**Reason:** To ensure that any archaeological interest has been adequately investigated and recorded prior to the development taking place. It is considered compliance with these requirements would only be effective if found to be acceptable and approved as such, prior to the commencement of development.

## Land Contamination

### Site Characterisation

- 9) Within 3 months of the commencement of development an investigation and a risk assessment, must be carried out in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site, which shall be submitted to and approved in writing by the Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of their findings must be produced. The written report shall be submitted to the Authority for its written approval. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination;
  - (ii) an assessment of the potential risks to:
    - human health,
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
    - adjoining land,
    - groundwater and surface waters,
    - ecological systems,
    - archaeological sites and ancient monuments;
  - (iii) an appraisal of remedial options, and proposal of the preferred option(s).

The investigation and the assessment must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

**Reason:** To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users, heritage assets and ecological receptors.

### **Submission of Remediation Scheme**

- 10) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and be submitted to the Authority for its written approval within 4 months of the date of commencement of development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

**Reason:** To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users, heritage assets and ecological receptors.

### **Implementation of Approved Remediation Scheme**

- 11) The approved remediation scheme must be carried out in accordance with its terms and conditions within 6 months of the date of commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Authority. The Authority must be given two weeks written notification in advance of the date commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Authority.

**Reason:** To remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users, heritage assets and ecological receptors.

### **Reporting of Unexpected Contamination**

- 12) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 10, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 11, and shall be submitted to the Authority for its written approval.



Following completion of measures identified in the approved remediation scheme a verification report must be prepared, in accordance with Condition 11 and be submitted to the Authority for its written approval.

**Reason:** To identify, remediate and control any contaminated land, or pollution of controlled waters and to minimise the risk to site workers, the public, end users, heritage assets and ecological receptors.

### **Soil Imports, Soil Handling and Material Storage**

- 13) No soils or soil making materials, shall be imported to the site, except in accordance with a scheme that has been submitted to and received the prior written approval of the Authority. The scheme shall include a schedule of the values that soils must be assessed against to determine their suitability for use on site, the sampling of the proposed soil at source and analysis against those values in a laboratory that is accredited under the MCERTS Chemical testing of Soil Scheme for all parameters (where this is available), and production of results to the Authority.

The development shall be carried out in accordance with the terms of any such approval.

**Reason:** In the interests of safeguarding the amenity of neighbouring occupiers/residents and for monitoring purposes.

- 14) No development shall take place until drawings detailing a layout for use of the site, including soil and material storage areas, parking spaces, operational equipment areas have been submitted to and approved in writing by the Authority. All use of the site under this permission shall be in accordance with the layout detailed under the drawings approved and the parking and storage areas shall be maintained as such for the duration of the development. No soil or material storage or parking which is outside the relevant space or area under drawings as approved shall take place at any time.

**Reason:** In the interests of safeguarding the amenity of occupiers of neighbouring properties. It is considered that compliance with these requirements would only be effective if the layout is found to be acceptable and approved as such, prior to the commencement of the development.

- 15) The Authority shall be given at least 7 days' notice in writing of the commencement of soil stripping operations. Before any part of the site is excavated or traversed by heavy vehicles or machinery or is built upon, or used for the storing of subsoil, soil forming material or

overburden, or as a machinery plant yard, or for the construction of a road, all available topsoil (and subsoil) shall be stripped from that part and stored in accordance with details to be submitted to and approved in writing with the Authority.

**Reason:** To prevent unnecessary trafficking over soil by heavy equipment and vehicles that may damage the soil in the interests of the successful restoration of the site.

- 16) All topsoil, subsoil, and soil forming material derived from the site shall be retained on the site for use in its subsequent restoration.

**Reason:** To ensure that remaining soil resources are retained, in the interests of the successful restoration of the site.

- 17) No plant or vehicles shall cross any area of unstripped topsoil or subsoil except where such trafficking is essential and unavoidable for undertaking permitted operations. Essential trafficking routes shall be clearly marked on the ground by stakes or other means. No part of the site shall be excavated, traversed, used for a road, for the stationing of plant or buildings, storage of subsoil or overburden, waste or mineral deposit, until all available topsoil and subsoil have been stripped from that part.

**Reason:** To prevent unnecessary trafficking over soil by heavy equipment and vehicles that may damage the soil in the interests of the successful restoration of the site.

- 18) No topsoil and subsoil shall be stripped unless they are in a dry and friable condition.

- a) No soils shall be moved during the months of November to March inclusive, unless otherwise approved in writing by the mineral planning authority (This shall only be considered on the basis of a soil assessment carried out by a qualified person); or
- b) When the soil to be moved or trafficked upon has a moisture content that is equal to, or greater than that at which the soils become plastic. (Tested in accordance with the “worm test” as set out in BS 1377:1975 “British Standard Methods Test for Soils for Civil Engineering Purposes”); or if
- c) There are pools of water on the soil surface.

**Reason:** To ensure that remaining soil resources are retained, in the interests of the successful restoration of the site.

- 19) All topsoil and subsoil shall be stored in separate mounds. Topsoil storage mounds shall not exceed 3 metres in height and subsoil mounds 5 metres in height. The mounds shall be constructed with the minimum amount of compaction.

**Reason:** To ensure that remaining soil resources are stored, in the interests of the successful restoration of the site.

- 20) All storage mounds to remain in situ for more than 3 months, or over winter, shall be grass seeded and managed in accordance with a scheme approved by the Authority. The scheme shall be submitted, in writing, to the Authority two months prior to the commencement of soil stripping and storage.

**Reason:** To ensure that remaining soil resources are stored, in the interests of the successful restoration of the site.

### **Access, Traffic and Protection of the Public Highway**

- 21) No development shall take place, until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Authority. The approved plan shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic signing or restrictions and commercial vehicle routing to and from the site. The development shall then be carried out in accordance with the CTMP as approved.

**Reason:** In the interests of the safety of the users of the highway and to protect the amenity of the area. It is considered that compliance with these requirements would only be effective if the CTMP is found to be acceptable and approved as such, prior to the commencement of the development.

- 22) No commercial, heavy goods or other vehicles shall enter or exit the site other than via the junction of the proposed construction access points and Southfield Lane, crossing Station Road only at the designated points across the site. The developer shall endeavour to ensure that throughout the development all heavy goods vehicle journeys to or from the site avoid any route other than the highway route from the access along to the A60 via Southfield Lane, Crags Road and Henny Moor Lane by: including clear instructions with a route plan to that effect within any agreements and arrangements with contracting parties which include provisions for carrying out such

journeys; by issuing such instructions and plans to any drivers of heavy goods vehicles employed by the developer, and by erecting and keeping prominent notices displayed at each access point to remind HGV drivers to adhere to that highway route.

**Reason:** To avoid heavy goods vehicle journeys to or from the site in association with the development which do not keep to the route from the access along any other route than to the A60 via Southfield Lane, Craggs Road and Hennymoor Lane in the interests of the safety of the users of the highway and to protect the amenity of the area.

- 23) Before any access onto Southfield Lane is used to access the site for the purposes hereby approved, the access shall be provided with visibility sightlines of 2.4m x 100m in each direction. The area forward of the sightlines shall be cleared and maintained throughout the period of the works clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

**Reason:** In the interests of the safety of the users of the highway and to protect the amenity of the area.

- 24) Before any permanent access onto Station Road is used to access the site for the purposes hereby approved, the access shall be provided with visibility sightlines of 2.4m x 150m in each direction. The area forward of the sightlines shall be cleared and maintained throughout the period of the works clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

**Reason:** In the interests of the safety of the users of the highway and to protect the amenity of the area.

- 25) Prior to being taken into use, any new access, either temporary or permanent, into the site from either Station Road or Southfield Lane shall be laid out and constructed in accordance with a scheme that has first been submitted to and approved in writing by the Authority. The development shall then be carried out in accordance with the scheme details as approved.

**Reason:** in the interests of the safety of the users of the highway and to protect the amenity of the area.

### **Construction Environmental Management Plan**

- 26) Prior to the start of each phase (phases 1 to 4) of the reclamation works, a construction environmental management plan shall be submitted to and approved in writing by the Authority. This shall include:

- a) methods for controlling noise and limiting noise levels to no more than those specified in mineral planning guidance and should not exceed background sound levels (set out in Appendix C Noise assessment report ref 20671/07-18/5587 July 2018) (LA90, 1hr) by more than 10 dB(A) and in any event should not exceed 55dB (A) ( $LA_{eq\ 1\ hour}$ ) free field (during normal working hours) measured at noise sensitive receptors. Exceedances of these limits will only be permitted for short, defined periods when additional mitigation measures have been agreed.
- b) hours of work.
- c) methods of controlling nuisance dust and soiling, odour and vibration which shall include but not be limited to the provision of wheel washes, speed limits, damping down, locations of soil storage mounds and site compounds etc.
- d) a timetable of works to include the programming of the phased archaeological work.

The construction and environmental management plan shall then be implemented, as approved, for the duration of the development.

**Reason:** To control the impact of noise, dust, vibration and odour generated by the development in the interests of the amenity of the area and the environment. It is considered compliance with these requirements would only be effective if found to be acceptable and approved as such, prior to the commencement of development in each phase.

### Lighting

- 27) No external lighting shall be installed except in accordance with a scheme that has been submitted to and approved in writing by the Authority. The scheme shall include precise details of the lighting proposals including lux levels. The scheme shall then be implemented as approved.

**Reason:** To minimise the nuisance and disturbance to neighbours, the surrounding area and the ecology of the area. It is considered that compliance with these requirements would only be effective if the lighting scheme is found to be acceptable and approved as such, prior to being installed.

### Environmental Protection

- 28) There shall be no burning of waste or any other materials on site.

**Reason:** To enable the Authority to control the emission to air from the development, in the interests of amenity of the area.

### Water Protection and Pollution Prevention

29) No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:

- a. “Whitwell Colliery Redevelopment Flood Risk Assessment & Drainage Strategy” (WYG, October 2018), “Indicative Drainage Strategy” (WYG, 22/11/2019), Drawing number 300 C, and “Whitwell Colliery Drainage Strategy Technical Note – LLFA Planning Comments” (Waterman, 25/03/2019) including any subsequent amendments or updates to those documents as approved by the Authority; and
- b. DEFRA’s Non-statutory technical standards for sustainable drainage systems (March 2015),

have been submitted to and approved in writing by the Authority. The approved drainage system shall be implemented in accordance with the approved detailed design, prior to the use of the building commencing.

**Reason:** To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Authority, in advance of the commencement of development. It is considered that compliance with these requirements would only be effective if the scheme to be submitted to the Authority is found to be acceptable and approved as such, prior to the commencement of the development.

30) No development shall take place until a detailed assessment has been submitted to and approved in writing by the Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 of the planning practice guidance. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i. into the ground (infiltration);
- ii. to a surface water body;
- iii. to a surface water sewer, highway drain, or another drainage system;
- iv. to a combined sewer.

Particular types of sustainable drainage systems may not be practicable in all locations. The applicant/developer should refer to the Planning

Practice Guidance via the following: <https://www.gov.uk/guidance/flood-risk-and-coastal-change>

PPG Paragraph: 080 Reference ID: 7-080-20150323, Revision date: 23 03 2015'

**Reason:** To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. It is considered that compliance with these requirements would only be effective if the detailed assessment details to be submitted to the Authority are found to be acceptable and approved as such, prior to the commencement of the development.

- 31) No development shall take place until details indicating how additional surface water run-off from the site will be avoided during the construction phase shall be submitted to the Authority for its written approval. The approved system shall be operating to the satisfaction of the Authority, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

**Reason:** To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development. It is considered that compliance with these requirements would only be effective if the construction phase surface water run-off details to be submitted to the Authority is found to be acceptable and approved as such, prior to the commencement of the development.

- 32) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there are multiple tanks, the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of the interconnected tanks, plus 10%. All filling points, vents, gauges, and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land, or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be directed to discharge downwards into the bund.

**Reason:** To prevent pollution of the water environment.

### Landscape and Ecology

33) Within 3 months of the date of commencement a Landscape and Ecology Management Plan (LEMP) shall be submitted to the Authority for its written approval. The details shall include the phased and final landscape restoration proposals; planting, seeding and habitat creation details; habitat creation and establishment actions; and details of management proposals. The LEMP should include:

- A revised site restoration plan which takes account of previous discussions, to include reconfiguration of the habitats proposed on site, to rationalise open mosaic habitat provision, to reinforce woodland character and consolidate tree and scrub planting, and appropriately compartmentalise the site, including with hedgerows as appropriate;
- Appropriate management of existing and new hedges;
- Clear management objectives and prescriptions for grasslands and open mosaic habitat areas that maintain the key landscape and visual objectives of the restoration;
- Amendments to planting, seeding and site management proposals for the benefit of invertebrates, especially Lepidoptera.

The plan shall be approved by the Authority subject to any modifications it may reasonably consider to be appropriate. The plan shall be implemented as approved.

**Reason:** To ensure the successful and appropriate re-establishment of landscape and habitats within the site, in the interests of nature conservation and landscape character.

### Protection of the Railway

34) Condition/s to secure appropriate protection of railway infrastructure, taking into account the recommended conditions from Network Rail in its consultation response dated 16 January 2019.

**Reason:** To protect railway infrastructure.

### Footnotes

- 1) Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website:



[www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp)  
email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.

- 2) Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- 3) Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- 4) Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the Economy Transport and Environment Department at County Hall, Matlock ([highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk)). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- 5) The applicant is advised to contact Derbyshire County Council ([highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk)) giving at least 6 weeks' notice prior to commencing should any works be necessary with the existing public highway.
- 6) The applicant is required to contact Derbyshire County Council ([highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk)) regarding permission for and to establish what temporary traffic management may be necessary throughout the duration of the works.
- 7) The applicant is advised to contact the Traffic & Safety team in the Economy, Transport and Environment Department at County Hall,

Matlock for advice regarding any temporary traffic management measures required at any time during the period of construction.

- 8) The development under this permission does not permit the importation of waste materials. In the event that additional fill material is required an application for planning permission would need to be made.

### **Statement of Compliance with Article 35 of the Town and Country (Development Management Procedure) (England) Order 2015**

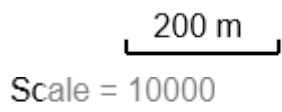
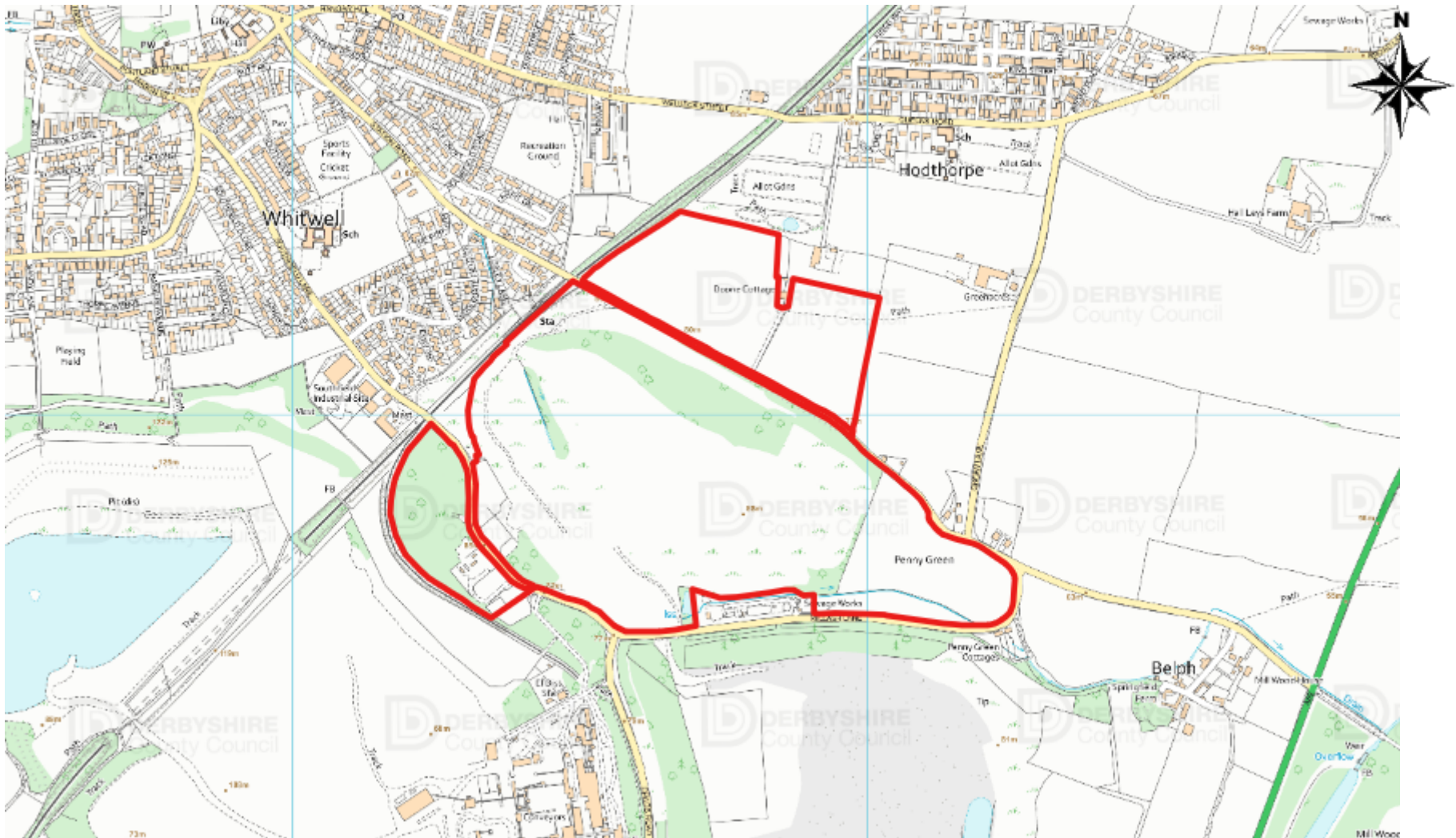
The Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full compliance with this Article. The applicant had engaged in pre-application discussions with the Authority prior to the submission of the application. The applicant was given clear advice as to what information would be required. The Authority also responded to a formal Scoping Opinion request concerning the issues addressed in the Environment Statement that accompanied the application.

The Environmental Statement, as submitted, covered all the necessary topics but did not fully address all the relevant aspects and issues of each topic and contained some assessments where the presentation was not satisfactory. In accordance with the EIA regulations, the applicant was given clear advice as to the form and content of the supplementary survey work required to enable an appropriate assessment of the proposed development to be made.

The requested information related to the need to complete the range of survey work submitted with the application and the need for further assessment of the impacts on archaeological interests, transport, biodiversity and drainage. Revised phasing plans and an updated ES document schedule were also provided by the applicant. These issues arose from the comments from the respective consultees to the original planning application documentation. The applicant also agreed to extend the timescale for the determination of the application.

In accordance with Section 100ZA of the Town and Country Planning Act 1990, as amended and the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018 ('the Regulations'), the applicant has been provided with a draft schedule of the conditions attached to this report. The schedule includes pre-commencement conditions requiring the submission of a construction traffic management plan, construction environmental management plan, a scheme of archaeological investigation, surface water management details and construction site layout details prior to the development commencing.

**Mike Ashworth**  
**Executive Director for Economy, Transport and Environment**



25-Jun-2019

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**Agenda Item No. 4.2**

**DERBYSHIRE COUNTY COUNCIL  
REGULATORY - PLANNING COMMITTEE**

**8 July 2019**

Report of the Executive Director – Economy, Transport and Environment

- 2 SECTION 73 APPLICATION TO NOT COMPLY WITH CONDITION 3 (DURATION) AND 4 (APPROVED DETAILS) OF PLANNING PERMISSION REFERENCE NUMBER CW9/0218/94: ERECTION OF A 15MW RENEWABLE ENERGY CENTRE AND ASSOCIATED INFRASTRUCTURE ON LAND AT THE FORMER DRAKELOW C POWER STATION, OFF WALTON ROAD, DRAKELOW  
APPLICANT: FUTURE EARTH ENERGY  
CODE NO: CW9/0319/108**

**9.1590.4**

**Introductory Summary** Planning permission for an energy from waste power station was granted in 2015 (planning permission code no. CW9/0615/48). A subsequent Section 73 application (CW9/0218/94) to change the design of the plant was granted in May 2018. The principle of the development of the application site for an energy from waste power station has therefore been established through the grant of these planning permissions.

The applicant now seeks further alternative external design changes, but also seeks to extend the duration of the operation of the plant from 25 to 30 years and, as such, has submitted this application to vary the latest planning permission code number CW9/0218/94.

This application proposes non-compliance with Condition 3 and a proposed variation of the condition to allow a 30 year operation of the plant (rather than the approved 25 year operation). The applicant contends that the additional five year period would be required as a result of part of the capital funding for the construction of the facility, which requires the operational period to be over a period of 30 years, rather than 25 years, to cover the term of the construction finance loan.

The applicant also proposes non-compliance with Condition 4 as there is a need to amend the design in order to cater for the change of the plant from a single-line based gasification system to a three-line gasification system, (a three line gasification system was initially approved under the original planning

permission CW9/0615/48, but altered under design changes approved under planning permission CW9/0218/94).

The main elements of the design include a reduction in height of the plant by approximately 10 metres (m), a revised built development footprint, and a general reconfiguration of layout. Fuel throughput, energy output and HGV movements would remain as previously approved.

The original planning application was accompanied by an Environmental Statement (ES) and the subsequent Section 73 application was accompanied by an addendum to the ES. The application now under consideration is also accompanied by a further addendum to the ES, which includes updated analysis with regard to air quality, noise and landscape and visual impacts.

I am satisfied that the proposed changes to the design of the facility and extended operational life of five years (from 25 to 30 years) would not result in any significant environmental or amenity impacts and would accord with the Development Plan, the National Planning Policy Framework (NPPF), and the National Planning Policy for Waste (NPPW). The application is therefore recommended for approval, subject to conditions. The applicant is also required to fulfil the obligations required under the terms of the previously agreed Section 106 agreement.

(1) **Purpose of Report** To enable the Committee to determine the planning application.

(2) **Information and Analysis**

### **Site and Surroundings**

The site lies in the grounds of the former Drakelow C Power Station, off Walton Road, Drakelow. This former coal fired power station was decommissioned in 2003 and subsequently demolished in 2006. The site is a derelict, vegetated parcel of land, comprising mounds of demolition material, two cooling tower concrete bases, which extend off the application site, and a concrete hardstanding, formerly occupied by buildings, yard areas and access roads associated with the power station. The site is 3.75 kilometres (km) to the south of Burton upon Trent. The suburb of Branston is 2km away to the north-east and the village of Walton on Trent is located 2.2km to the south. The site is a rectangular area of approximately 2.5 hectares (ha). Access to the site is taken off Walton Road to the south-west.

### **Consented Development**

Planning Permission was first granted for the development by this Council on 24 November 2015 under planning code number. CW9/0615/48, subject to conditions and a legal agreement under Section 106 of the Town and Country

Planning Act 1990, which includes obligations for HGV routing and Greenway and National Forest Contributions.

The original permission CW9/0615/48 was for a 15 Mega Watt (MW) renewable energy centre and associated infrastructure, utilising biomass rich fuel through gasification. The combined heat and power (CHP) ready gasification plant would be fuelled by Biomass Rich Fuel (BRF) with an annual throughput of 169,500 tonnes of fuel per annum. The system would also provide heat to the approved Drakelow Park Scheme that adjoins the former Drakelow C Power Station site. The original scheme involved the construction of a steel portal framed building measuring 23m high, 164m long and 80m wide to house the plant on a site that measures 2.54ha. The original scheme also included a 45m high flue stack.

A further application made under Section 73 of the Town and Country Planning Act 1990, planning permission code number. CW9/0218/94, was granted 17 May 2018 to vary the original permission to not comply with Condition 4 (Approved Development). This essentially agreed external design changes to the scheme as originally approved, including increasing the height of the main building to 33.5m to the central section of the plant and to 34.6m in an area over the Refuse Derived Fuel (RDF) mixing bunker, increase in flue stack height to 55m, and various other external building and layout design changes.

The development commenced under this planning permission includes access works, visibility improvements and some site clearance has been undertaken.

### **The Proposals**

The planning application now under consideration seeks, under Section 73 of the Town and Country Planning Act 1990, to:

- Not comply with Condition 3 of planning permission CW9/0218/94 (Duration); and
- Not comply with Condition 4 of planning permission CW9/0218/94 (Approved Details).

The applicant now seeks further alternative external design changes, but also seeks to extend the duration of the operation of the plant from 25 to 30 years and, as such, has submitted this application to vary the latest planning permission ref: CW9/0218/94.

Condition 3 of planning permission CW9/0218/94 states:

*“3) The use under this permission shall cease not later than the expiration of 25 years from the date of commencement of commercial operations at the development. The date of the commencement of commercial waste*

*operations shall be notified to the Waste Planning Authority within seven days of the commencement.*

**Reason:** *To avoid the use of the facility to be developed under this permission continuing beyond 25 years duration without a prior assessment taking place of the case for the continuation of use.”*

Condition 4 of planning permission CW9/0218/94 requires that the development shall be carried out in accordance with all plans and supporting documents submitted with that application.

The application under consideration now seeks not to comply with Condition 4 of CW9/0218/94 and proposes that the development be carried out in accordance with revised design details as submitted.

The main changes to the design from that approved under planning permission CW9/0218/94 and which are now proposed include:

- Revised built development footprint to a rectangular plan view incorporating office block. Revised built development footprint of approximately 10,850m<sup>2</sup>. (The footprint approved under the previous Section 73 application CW9/0218/94, was 9,160m<sup>2</sup>. The footprint approved under the original application CW9/0615/48, was 12,200m<sup>2</sup>).
- Roof height revised to a simpler design, largely single level 25m in height with 1m parapet to main building (parapet excluded on cooling plant area. (Maximum height previously approved was under Section 73 CW9/0218/94 at 34.6m in part).
- Location of fire water storage tanks and pump house to be within the screened area north of the building (were to be positioned to the south-east corner of the site under approved Section 73 permission CW9/0218/94).
- Removal of previously approved ash silo's (now a different system inside the building to be installed).
- Location of weighbridges now proposed to be close to the service entrance and exit.
- Removal of external fuel oil tank.
- No bio-filter now required and there is no separate RDF reception building.
- Design of the workshop and office space will now be over four floors and with the office block moved to a more central position.

### **Operational Aspects**

The power output at 15 MW, the fuel feedstock type (BRF), waste fuel throughput of maximum 169,500 tonnes of per annum, and predicted vehicle movements would remain the same as they are for the development proceeding as approved under planning permission CW9/0218/94.



It is proposed to utilise the existing access road to the former Drakelow C Power Station, off Walton Road. Daily heavy lorry loads would vary over the construction period, with a predicted daily peak of 200 (100 in/100 out) HG movements over a 10 hour working day. When operational, the Renewable Energy Centre would produce up to 60 two way HGV trips per day.

As currently approved, it is proposed to operate the amended facility on a continuous basis, 24 hours per day, 7 days per week, for 365 days per year. Waste deliveries to the facility, removal of ash and maintenance, would be during normal working hours, being 0700 hours to 1800 hours Mondays to Saturdays and no working on Sundays or Bank Holidays (Condition 12 of planning permission ref. CW9/0218/94). Hours for construction activities are set out in Condition 13 of the planning permission at 0700 hours to 1800 hours Mondays to Fridays, 0800 hours to 1300 hours Saturdays and no working on Sundays or Bank Holidays.

### **Updated Environmental Assessment**

An ES Addendum has been produced to accompany this application. It has focused on those areas where the proposed development has potential to result in changes to the previously approved scheme. The main sections of the updated ES are:

- Air Quality;
- Noise Update; and
- Landscape and Visual Impact Assessment Update.

### **Site Planning Application History**

- CW9/0615/48 - Planning permission was granted 30 June 2015 for a 15MW renewable energy centre and associated infrastructure utilising biomass rich fuel through gasification.
- CW9/0218/94 - Planning permission was granted 17 May 2018 pursuant to Section 73 of the Town and Country Planning Act 1990 for the erection of a 15MW renewable energy centre and associated infrastructure on land at the former Drakelow C Power Station, off Walton Road, Drakelow without complying with Condition 4 (Approved Details) of the previous permission (CW9/0615/48).

### **Consultations**

#### **Local Member**

Councillors Swann (Swadlincote South), Murray (Linton), Mussan (Swadlincote Central) and Bambrick (Swadlincote North) were consulted and comments were requested by 11 April 2019.

**South Derbyshire District Council (Planning)**

No objections.

**South Derbyshire District Council (Environmental Health)**

No objections.

**East Staffordshire Borough Council (Planning)**

No objection.

**Staffordshire County Council (Planning)**

No objection. An updated environmental assessment has been carried out and finds that the changes would not result in any further significant environmental effects.

**Walton on Trent Parish Council**

Objects to the application. The Parish Council objects on the following grounds:

- The original plans have now significantly altered.
- The increase in the number of HGVs visiting and leaving the site with industrial waste.
- The cumulative effect of traffic passing through the village.
- The concern that the bypass may now not be happening. The original planning application had been approved when it had been assumed that the bypass would be built prior to the 100<sup>th</sup> house being built. The conditions for the Drakelow Park development have, in the meantime, been altered to allow more houses to be built prior to the bypass being completed. Therefore, the Parish Council is concerned that increased traffic will arise during both the construction and operation of the site without adequate road infrastructure being in place.

**Branston Parish Council, Barton Under Needwood Parish Council, and Drakelow Parish Meeting**

Comments were requested by 11 April 2019. No comments have been received.

**The Environment Agency**

No objection. The applicant will need to ensure it has contacted the Environment Agency (EA) with regards to its permit as the EA may have comments to make regarding the proposed changes under the Environmental Permitting Regulations.

**Natural England**

No objection. Natural England considers that the proposed development will not have significant adverse impacts on designated sites. Natural England considers that the proposed development will not have likely significant effects

on the River Mease Special Area of Conservation (SAC) and has no objection to the proposed development.

With regard to meeting the requirements of the Habitats Regulations, Natural England has advised that:

*The proposal is unlikely to have any significant effect on the River Mease Special Area of Conservation (SAC) as the development will not be permitted to proceed until the LPA is satisfied that there will be no harmful discharges of foul or surface water from the application site into the River Mease SAC or its tributaries.*

**Derbyshire Wildlife Trust**

No objection. Derbyshire Wildlife Trust (DWT) advises that no new adverse ecological impacts are anticipated as a result of the proposal not to comply with conditions 3 and 4 of the permitted CW9/0218/94.

**The Coal Authority**

No objection. The site does not fall within the defined Development High Risk Area.

**Western Power**

No comments received.

**Severn Trent Water Limited**

No comments received.

**National Air Traffic Services**

No comments received.

**Lead Local Flood Authority**

No objection.

**Local Highways Authority**

No objection. The impact of the development on highway conditions with the approval of the above application would not differ from those assessed in respect of previous approvals for the above site. Therefore, there are no objections to the proposal from the highway point of view.

**Publicity**

The application was advertised by a press notice in the Burton Mail with a request for observations by 3 May 2019.

The application was also advertised by seven site notices with a request for observations by 5 May 2019.

No representations have been received from the public.

One letter of support has been received from Cushman and Wakefield (Commercial Property Consultants) on behalf of EON UK plc. The letter supports the proposals and states that they are fully compliant with planning policy.

## **Planning Considerations**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. In relation to this application, the relevant policies of the development plan are the saved policies contained within the Derby and Derbyshire Waste Local Plan (DDWLP) (2005) and the South Derbyshire Local Plan (SDLP) (2017). Other material considerations include national policy, as set out in the 2019 NPPF, and associated Planning Practice Guidance (PPG), the Waste Management Plan for England (WMPE) and with the NPPW.

Whilst the original planning permission (CW9/0615/48), granted on 24 November 2015, pre-dated the adoption of the SDLP 2017, relevant planning policy documents largely remain as that which were considered under the previous and most recent planning permission CW9/0218/94, granted on 17 May 2018, which this application seeks to vary. The NPPF was revised in 2019, however, it is not considered that the content of the revisions are of particular relevance to this application.

## **The Development Plan**

### **Saved Policies of the Derby and Derbyshire Waste Local Plan (2005)**

- W1b: Need for the Development.
- W5: Identified Interests of Environmental Importance.
- W6: Pollution and Related Nuisances.
- W7: Landscape and Other Visual Impacts.
- W8: Impact of the Transport of Waste.
- W9: Protection of Other Interests.
- W10: Cumulative Impacts.

### **South Derbyshire Local Plan (2017) Policies**

- S1: Sustainable Growth Strategy.
- S2: Presumption in Favour of Sustainable Development.
- BNE1: Design Excellence.
- BNE4: Landscape Character and Distinctiveness.
- BNE12: Former Power Station Land.
- SD6: Sustainable Energy and Power Generation.

INF1: Infrastructure and Developer Contributions.

### **Neighbourhood Plan**

The site is within Drakelow Parish for which there is yet no emerging or adopted Neighbourhood Plan.

### **National Planning Policy Framework (Revised 2019)**

The NPPF sets out the Government's planning policies for England and how these should be applied. It states that the purpose of the planning system is to contribute to the achievement of sustainable development and the framework, as a whole, contains a presumption in favour of sustainable development. The term '*sustainable development*' is defined as '*meeting the needs of the present without compromising the ability of future generations to meet their own needs*'. The NPPF goes on to say that achieving sustainable development means that the framework has three overarching objectives, economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

Those sections of the NPPF that are particularly relevant to this proposal are:  
Section 2: Achieving sustainable development.  
Section 12: Achieving well designed spaces.  
Section 15: Conserving and enhancing the natural environment.

### **Planning Policy Guidance (Waste)**

On-line national planning policy guidance.

### **National Planning Policy for Waste (2014)**

Determining Planning Applications.  
Appendix A: The Waste Hierarchy.  
Appendix B: Locational Criteria.

### **Waste Management Plan for England (2013)**

The Waste Hierarchy.

### **The Principle of the Development**

The principle of the development of the application site for an energy from waste power station has previously been established through the grant of the original planning permission to construct a waste to energy facility at this location, and subsequent Section 73 application CW9/0218/94 to change the design of that plant.

The imposition of new policies under the SDLP were noted in the decision to approve the most recent planning permission for the development, to which this proposal relates. The use of the site for the construction and operation of an energy from waste plant would be in general accordance with local and

national planning policies identified above. The principle of development therefore requires no further consideration in the planning assessment.

### **The Need for Development**

The need for the wider development of the energy from waste plant has previously been assessed which has been accepted in consideration of the previous planning applications. The key question here now focusses on whether the need for changes to the design of the approved scheme, and also an increase of five years to the approved limited duration of the development and whether the impacts of these proposed changes differ to what has previously been assessed.

The applicant proposes non-compliance with Condition 3 and a proposed variation of the condition to allow a 30 year operation of the plant (rather than the approved 25 year operation). The additional five year period is required as a result of part of the capital funding for the construction of the facility, which requires the operational period to be over a period of 30 years rather than 25 years to cover the term of the construction finance loan.

This would reflect the statement within the 2014 publication "*Energy from Waste - A guide to the debate*" by the Department of Environment, Food and Rural Affairs (DEFRA), which acknowledges that plant is built with a minimum planned lifetime of typically between 25-30 years.

The applicant proposes non-compliance with Condition 4 as design alterations are required to cater for the change of the plant from a single-line based gasification system to a three-line gasification system, (a three line gasification system was initially approved under the original planning permission CW9/0615/48, but altered under design changes approved under planning permission CW9/0218/94).

Whilst in principle these changes would appear acceptable, the potential environmental impacts which may occur as a result of the changes must be considered further and assessed against relevant planning policy. The areas which are considered to have the most potential for change upon environmental impact are:

- Air Quality.
- Noise.
- Landscape and Design.

### **Air Quality**

Paragraph 170(e) of the NPPF, Appendix B (g) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP, seek to ensure that environmental effects (such as upon air quality) are appropriately considered and that proposals do not significantly harm human health and the environment.

An updated air quality assessment has been undertaken for the proposed development and forms part of the addendum to the ES. This has focussed on the effects resulting from operation emissions on human and habitat receptors. The application site is not within a designated Air Quality Management Area (AQMA). Modelling of the revised design of the proposed development has shown that predicted concentrations at sensitive receptors of substances emitted from the proposed development would be similar to those predicted in the original assessment. For sensitive habitat sites, which include the River Mease SAC, the impact of airborne Nitrogen Oxide (NO<sub>x</sub>), Ammonia (NH<sub>3</sub>), Sulphur Dioxide (SO<sub>2</sub>) and Hydrogen Fluoride (HF) have been assessed, as well as acidification and nutrient nitrogen deposition. Predicted concentrations and deposition rates have been compared to background information and relevant critical levels and critical loads for the sensitive habitats identified.

For the majority of the pollutants considered, the impact on human health was assessed as 'negligible' in accordance with the Institute of Air Quality Management (IAQM) planning guidance for air quality. For arsenic, the impact was assessed as 'slight to moderate adverse' but the predicted total concentration (contribution of the Proposed Development plus background) was predicted to be 41% of the most stringent air quality objective and it is very unlikely that this would be exceeded as a result of the development. For habitat sites, the impact of emissions from the proposed development would not be significant. No significant effects on air quality or human health are predicted.

The impacts of harmful airborne substances, as well as acidification and nutrient nitrogen deposition, have therefore been assessed for human receptors and sensitive habitat sites, which include the River Mease SAC. The predicted impacts are similar to those within the original Environmental Impact Assessment (EIA) and subsequent ES Addendum under the previous application that there would be no significant effects with regard to air quality as a result of the design changes proposed.

The Town and Country Planning system is concerned with control of the development of land. The regulator of waste management processes is the EA and, in the assessment and determination of such proposals, the two regulatory regimes complement each other. The applicant is therefore also required to obtain an appropriate permit from the EA for the operation of the plant. In assessing an Environmental Permit application, the EA would address the issues relating to emissions/health impacts which objections relate to. Neither the EA nor South Derbyshire District Council (SDDC), which has an environmental health function, have objected to this application.

Given the findings of the update air quality assessment, I am satisfied that no significant effects on air quality or human health are likely to result as a

consequence of the design change and extension of the operating life of the plant by an additional five years. In this regard, the application is considered to be in accordance with Paragraph 170(e) of the NPPF, Appendix B (g) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP.

### **Noise**

Paragraph 170(e) of the NPPF, Appendix B (j) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP are relevant to the consideration of noise issues.

An updated noise assessment submitted as part of the addendum to the ES has considered the proposed changes to operational plant to be installed and has predicted noise levels based on the maximum sound levels which may be emitted from the site.

The assessment of operational noise levels has been undertaken against the fixed daytime and night time noise level limits that were detailed within the original ES and that are taken from World Health Organisation (WHO) documentation and BS8233:2014.

Noise modelling has been updated to reflect the proposed design changes and utilising source sound level data that is available at this stage in the design process. Predictions have been made based on broadband noise levels. The assessment has concluded that the predicted operational noise levels are below the fixed noise guideline levels and that, with an appropriate Noise Management Plan in place, the development would be able to operate in accordance with the previously applied planning conditions. There would be no significant effects.

Cumulative assessment has considered other development (constructed and approved) and has found that cumulative noise levels are unlikely to result in an adverse noise impact at any receptor with total noise levels remaining below fixed guideline levels.

A Noise Management Plan was submitted to Derbyshire County Council (DCC) to satisfy conditions 13, 16 and 17 of the Section 73 Approved Development (permission reference CW9/0218/94). The measures, limits and complaints investigation procedure included in that Noise Management Plan remain applicable to this proposal and a condition requiring that the development and operation of the plant be carried out in accordance with the agreed Noise Management Plan is recommended.

No objections have been received from the EA or SDDC's Environmental Health with regard to noise issues as a result of the proposal.



I am satisfied that, subject to a condition requiring on going compliance with the agreed Noise Management Plan, the proposal would accord with Paragraph 170(e) of the NPPF, Appendix B (j) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP in this regard. No significant effects on noise are likely to result as a consequence of the design change and extension of the operating life of the plant by an additional five years.

### **Landscape and Design**

At national level, the NPPF promotes good design and seeks to protect landscape and local character. The most relevant section of the NPPF in this regard is considered to be Section 12: Achieving Well Designed Places. Appendix B (c) of the NPPW similarly identifies landscape impact as a consideration in the determination of waste planning applications.

Paragraph 127(c) of the NPPF requires that planning decisions are sympathetic to local character, including the surrounding built and landscape setting, whilst not preventing or discouraging appropriate innovation or change.

With regard to the Development Plan, Policy W7: *Landscape and Other Visual Impacts* of the DDWLP states that waste development will be permitted only if:

*“...the appearance of the development would not materially harm the local landscape or townscape and would respect the character and local distinctiveness of the area; and the development would be located and designed to be no larger than necessary and to minimise its visual impact on or to improve the appearance of the townscape or landscape.”*

Policies BNE1 and BNE4 of the SDLP promote good design principles and seek to minimise impact upon the landscape and its character.

The site is located within both the Mease/Sence Lowlands National Character Area (as defined by Natural England), and the Village Estate Farmlands Landscape Character Type (LCT), as defined in the Derbyshire Landscape Character Assessment.

A revised assessment has been undertaken that considers the proposed changes against a baseline that includes the approved development. It finds that the proposed development would result in a number of limited landscape and visual effects against the baseline of the Section 73 Approved Development, and has therefore assessed the impacts of the proposed development on landscape character and visual receptors using the same study parameters as the original Landscape and Visual Impact Assessment (LVIA).

Visualisations have been updated from selected viewpoints where the proposed development would be visible or proximate enough to warrant detailed assessment. These visualisations have been used to inform the updated assessment. The majority of additional effects occur at long distances and all are against a backdrop that includes electrical transmission infrastructure. None of the limited effects identified are considered to be significant (in landscape or visual terms, during the construction or operational period). The updated LVIA concludes that no additional significant cumulative landscape and visual effects are likely to arise as a result of the proposed development.

Given that a major change from the approved scheme would be to the overall height of the building, which would be a reduction of 10m, I would concur with the findings of the updated LVIA that no significant landscape and visual impacts are likely to result as a consequence of the design revisions.

The revised built development footprint of approximately 10,850m<sup>2</sup> is slightly more than that approved under the previous Section 73 application CW9/0218/94, of 9,160m<sup>2</sup>, however, it is less than the footprint approved under the original application CW9/0615/48, of 12,200m<sup>2</sup>. I do not consider that the modest increase in footprint from application CW9/0218/94 would have any significant visual impact upon the landscape, particularly given the reduction in overall height proposed.

With conditions to agree an appropriate landscaping scheme and maintenance, and agreement of materials and colour finishes, I am satisfied that the revised design is acceptable and in accordance with Paragraph 127(c) of the NPPF, Appendix B (c) of the NPPW, Policy W7 of the DDWLP, policies BNE1 and BNE4 of the SDLP.

## **Other Issues**

### **Section 106 Legal Agreement**

The original Section 106 agreement, dated 24 November 2015, for CW9/0615/48 provided for the following obligations:

1. To pay the Greenway Contribution (£25,000) and the National Forest Contribution (£10,000) prior to commencement of development.
2. Prior to commencement to implement the Visibility Improvements (works to provide visibility sightlines at junction with Walton Road which are to extend from 2.4m back from the north-western carriageway edge of Walton Road for a distance of 150m in each direction.
3. To maintain the land in advance of the Visibility Improvements from obstructions for the lifetime of the development.
4. To use reasonable endeavours to ensure HGVs entering and leaving the Site do so via the Approved Vehicular Routes.

The original agreement was varied by Deed of Variation dated 23 August 2018, pursuant to the Section 73 application CW9/0218/94. This Deed applied the terms of the original Section 106 to the Section 73 permission. It further included a clause stating that should DCC grant a planning permission pursuant to a Section 73 application, references in the Agreement to Application and Planning Permission shall be deemed to include any subsequent planning applications and permissions and the Agreement will take effect provided that the Parties agree in writing.

The financial commitments in clause 1 of the legal agreement have been paid in full to DCC, and EON and the applicant have confirmed their commitment in writing to honour clauses 2-4.

The application is therefore in accordance with Policy INF1 of the SDLP which states that development, that is otherwise in conformity with the Local Plan but generates a requirement for infrastructure, will normally be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of that development is provided.

The objection expressed by Walton Parish Council is not considered to indicate any unacceptability in the proposed changes associated with this application, because there is no reason to expect that the changes would increase the number of HGV movements of waste involved with the development.

### **Conclusions**

I am satisfied that the proposed variation of planning permission CW9/0218/94 to not comply with conditions 3 and 4, for design variations and to extend the operational life of the plant by five years, is acceptable.

The applicant has provided valid reasons for the need for the variation and has provided an addendum to the ES considering likely significance of effects upon air quality, noise and visual impacts.

The updated ES concludes that the proposed changes to the consented design would not result in any significant effects. The proposed development accords with national and local planning policies, and this application is therefore recommended for approval subject to the conditions below.

(3) **Financial Considerations** The correct fee of £234 has been received.

(4) **Legal Considerations** This is an application submitted under Part III of the Town and Country Planning Act 1990 which falls to this Authority to determine as Waste Planning Authority.

I do not consider there to be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

**(5) Environmental and Health Considerations** The Conservation of Habitats and Species Regulations 2017 consolidate earlier regulations and now transpose the European Union (EU) Directive on Natural Habitats, and Wild Fauna and Flora (92143IEEC) into national legislation. They afford a high level of protection to a variety of species that are considered important at a European scale. The Regulations identify European Protected Species and various habitats of importance within the EU, with important sites being designated as SAC. Any proposed development that may have a significant effect on a SAC (either direct, indirect, temporary or permanent) should be assessed in relation to the site's 'conservation objectives', i.e. the reasons for which the site is designated.

Under the 2017 Regulations, an "appropriate assessment" of the implications of the proposed development, in view of the site's conservation objectives must be made in respect of any decision to be taken for any consent for a project (or a plan) or which either alone or in combination with other plans or projects would be likely to have a significant effect on a European Site, and is not directly connected with the management of the site for nature conservation.

Natural England has stated that it is satisfied the predicted emissions from the development would not have a significant effect on the River Mease SAC. A screening assessment has been undertaken by the Authority to consider the need for an appropriate assessment to be undertaken under the Habitat Regulations 2017. The screening assessment has found that the proposed development will have no likely significant effect on the River Mease SAC, and that (in line with the comments received from Natural England) there is no requirement to undertake an appropriate assessment for the proposed development.

### **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

**(6) Background Papers** File No 9.1590.4  
Application documents as submitted dated 15 March 2019, valid 18 March 2019.  
Correspondence from the Coal Authority dated 25 March 2019, East Staffordshire Borough Council dated 28 March 2019, the Environment Agency

dated 28 March 2019, the Lead Local Flood Authority dated 1 April 2019, Natural England dated 8 April 2019, Staffordshire County Council dated 10 April 2019, Walton on Trent Parish Council dated 18 April 2019, Derbyshire Wildlife Trust dated 3 June 2019, and South Derbyshire District Council dated 7 June 2019.

Representations from an interested party dated 8 April 2019.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that planning permission is **granted** subject to the following conditions:

**Duration**

- 1) The use under this permission shall cease not later than the expiration of 30 years from the date of commencement of commercial operations at the development. The date of commencement of commercial waste operations shall be notified to the Waste Planning Authority within seven days of the commencement.

**Reason:** To avoid the use of the facility to be developed under this permission continuing beyond 30 years duration without a prior assessment taking place of the case for continuation of use.

**Approved Development**

- 2) The development shall be carried out in full compliance with the details contained in the Planning Application dated 25 June 2015 and accompanying Environmental Statement documents, submitted by TNEI Services, on behalf of Future Earth Energy Limited on 26 June 2015 and received as valid by the Waste Planning Authority on 30 June 2015, as amended by the planning application received by the Waste Planning Authority as valid 18 March 2019 and accompanying Environmental Statement Addendum documents, submitted by TNEI, except insofar as otherwise specified under the terms of the conditions below. For the avoidance of doubt, this condition requires the full implementation of all mitigation measures proposed in the Planning Applications and Environmental Statement.

For ease of reference, these documents comprise the following:

- Application form
- Cover Letter
- Environmental Statement Addendum (March 2019)
- Air Quality Assessment (March 2019)
- Appendix B and Appendix B1, Noise Impact Assessment (March 2018)
- Landscape and Visual Impact Assessment 2019 Addendum (March 2019)

- Drawing Figure 1 Doc ref: 13239-002 Site Location Plan dated 8 March 2019
- Drawing no. 17315/P-01 Site Plan undated
- Drawing no. 17315/P-02 Ground Floor Layout
- Drawing no. 17315/P-03 Proposed Front and Rear Elevations
- Drawing no. 17315/P-04 Proposed Side Elevations
- Drawing no. 17315/P-05 Cross Section
- Drawing no. 17315/P-08 Drainage Layout
- Drawing no. 17315/P-09 Longitudinal and Site Sections
- Drawing no. 17315/P-10 First-Second & Third Floor Office Layouts
- Drawing no. 17315/P-07 Roof Plan View

Except in so far as the approved documents and plans listed above are amended by the conditions specified below.

**Reason:** To ensure that the development is carried out in accordance with the details in the submitted planning application of 2015 as amended by the details in the submitted planning application of 2019, in the interest of the amenity of the area.

### Capacity

- 3) The development shall not receive more than 169,000 tonnes of material per annum. The operator shall maintain records of the tonnage of waste delivered to the site and shall make these records available to the Waste Planning Authority at any time upon request.

**Reason:** To control the impact of the development.

- 4) No waste shall be deposited or stored at the site except within the designated areas of the site.

**Reason:** In the interests of visual amenity.

- 5) Prior to the commencement of use under this planning permission, a study detailing the demand for feasibility and commercial viability of, exporting heat from the gasification plant for use by local domestic, commercial and/or industrial users (together with the demand for such heat), shall be submitted to and approved in writing by the Waste Planning Authority. If the study concludes that exporting heat from the plant is not immediately feasible or commercially viable, then a timetable for the review of the study shall be agreed in writing with the Waste Planning Authority.

**Reason:** To facilitate full energy recovery.

### Visual Amenity

- 6) No construction works of the main plant building shall be commenced until details of the composition and colour of materials have been submitted to and approved in writing by the Waste Planning Authority. The materials used in the construction shall accord with the approved details.

**Reason:** To control the design of the building.

- 7) The proposed waste management facility shall not be brought into use until the site boundary has been secured and treated in accordance with details which shall have been submitted to and approved in writing by the Waste Planning Authority.

**Reason:** To protect the visual amenities of the area.

- 8) No external lighting shall be installed or operated except in accordance with a scheme that shall have been submitted to and approved in writing by the Waste Planning Authority.

**Reason:** In the interests visual amenity and light pollution mitigation.

### Hours of Delivery, Removal and Maintenance

- 9) No delivery of fuel, removal of ash or other waste, or routine maintenance, shall be undertaken outside of the hours of 0700 hours to 1800 hours from Mondays to Saturdays inclusive, or at any time Sundays or bank holidays.

**Reason:** To safeguard the amenity of local residents and adjacent properties and land users.

### Construction Activities

- 10) All demolition and construction activities shall be undertaken in accordance with the following:
- (i) No construction or demolition works, movement of traffic, or deliveries to and from the premises, shall take place other than between 0700 hours and 1800 hours Mondays to Fridays, and 0800 hours on Saturdays, and at no time on Sundays or bank holidays.
  - (ii) All construction (and any remediation) activities shall comply with the guidance in British Standard BS5228 Noise and Vibration, and Control on Construction and Open Sites. Efficient silencers shall be fitted to, used and maintained in accordance with the manufacturers' instructions on all vehicles, plant and machinery to be used on the site. Save for the purposes of maintenance, no machinery shall be operated with the covers open or removed.

- (iii) During dry and/or windy weather, dust suppression methods, such as water bowsers or hosepipes, shall be used to prevent dust being blown off the site. At such times as the prevention of dust nuisance by these means is not possible, the movement of vehicles, soils, or dusty materials shall temporarily cease until such times as the weather conditions improve so as to enable the recurrence of dust nuisance to be prevented by these means.
- (iv) All vehicles entering or leaving the site and carrying materials likely to deposit dust or mud on the highway, shall be adequately sheeted.
- (v) No vehicle shall leave the site unless in a clean condition, such that it does not deposit dust or mud on the highway. Any dust or mud deposited on the highway shall be removed daily.
- (vi) No waste arising from demolition or construction activities shall be disposed of by burning on site.

**Reason:** To safeguard the amenity of local residents, adjacent properties and land owners.

### Landscaping

- 11) No construction works as hereby approved shall commence before a scheme for landscaping of the site has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall be implemented as approved within the first planting and seeding seasons after the completion of construction works. Within five years of the implementation of the scheme, any tree, shrub or hedgerow which die or become seriously damaged, diseased or are removed, shall be replaced with plants of the same species or such alternatives as may be approved by the Waste Planning Authority.

**Reason:** In the interests of the amenity of the local area and to ensure the development is adequately screened.

### Dust

- 12) The development shall be undertaken and in accordance with the Construction Phase Dust Management Plan produced by TNEI approved by the Waste Planning Authority 1 November 2018.

**Reason:** To protect the amenities of the locality from the effects of any dust arising from the development.

### Noise

- 13) The development shall be carried out in accordance with the Noise Management Plan produced by TNEI and approved by the Waste Planning Authority 1 November 2018.



**Reason:** To safeguard the amenity of local residents, adjacent properties and land users.

- 14) The level of noise emitted from the site during construction shall not exceed 70 db LAeq during any 30 minute period between 0800 hours to 1700 hours Mondays to Fridays and 0830 hours to 1300 hours in Saturdays, measured at, or recalculated as, a height of 1.2m above ground level and 3.5m from the façade of any residential property or other noise sensitive building that faces the site. Construction noise at any other permitted time shall not, so measured, exceed 60 db LAeq during any 30 minute period.

**Reason:** To safeguard the amenity of local residents, adjacent properties and land users.

### **Chemical Storage**

- 15) Any facilities for the storage of oil, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses shall be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels and overflow pipe outlets shall be detailed to discharge downwards into the bund.

**Reason:** To minimise the pollution of watercourses and aquifers.

### **Highway Safety**

- 16) The construction process shall be carried out in accordance with the Construction Traffic Management Plan reference CTMP01/1 or such alternative Management Plan as may subsequently be agreed in writing with the Waste Planning Authority.

**Reason:** In the interests of highway safety.

- 17) Space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees' and visitors' vehicles, laid out and constructed in accordance with detailed designs which have been submitted to and approved in writing by the Waste

Planning Authority. Once provided, the spaces shall be retained free from any impediment to their designated purposes throughout the construction period.

**Reason:** In the interests of highway safety.

### **Ecology**

- 18) No clearing of vegetation shall be carried out in the period between 1 April and 31 August unless approved in writing by the Waste Planning Authority.

**Reason:** To protect nesting birds.

- 19) The development shall be carried out in accordance with (i) the Pre-Commencement Ecology Walkover Report (document number EES18-034) produced by Elliott Environmental Surveyors Limited, as submitted by TNEI to the Waste Planning Authority on 31 August 2018, as amended by the supplementary Pre-Commencement Ecology Walkover Report produced by Elliott Environmental Surveyors Limited and submitted by TNEI to the Waste Planning Authority on 16 October 2018, in particular, the mitigation measures regarding nesting birds in Appendix 1, badgers in Appendix 3, and reptiles in Appendix 4, as summarised in Section 3 of the report; and (ii) the Method Statement for Translocation of Open Mosaic Priority Habitat (document reference EES18-034), produced by Elliott Environmental Surveyors Ltd and submitted to the Waste Planning Authority on 25 October 2018 by TNEI, as supplemented by the Bunding Plan (document reference 10226-030) produced by TNEI and submitted the Waste Planning Authority on 26 October 2018.

**Reason:** To ensure that the ecology of the site is protected from the effects of the development.

### **Remediation Strategy**

- 20) Unless otherwise agree in writing by the Waste Planning Authority, the development shall be carried out in accordance with the Remediation Strategy produce by EAME and approved by the Waste Planning Authority 1 November 2018.

**Reason:** In the interests of remediation of any contamination found present at the site.

- 21) No occupation of any part of the development shall take place until a verification report, demonstrating completion of measures set out in the approved remediation scheme and the effectiveness of the measures, shall be submitted to and approved in writing by the local planning

authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a “long-term monitoring and maintenance plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan.

**Reason:** To ensure that any measures required as an outcome of the site investigation and risk assessment are completed to a satisfactory standard.

### **Decommissioning**

- 14) Decommissioning shall not commence until a Decommissioning Traffic Management Plan has been submitted to and approved by the Waste Planning Authority. Decommissioning shall be carried out in accordance with the approved Decommissioning Traffic Management Plan.

**Reason:** In the interests of highway safety.

### **Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015**

The Council, as Waste Planning Authority, worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article. The applicant has engaged in pre-application discussions with the Authority prior to the submission of the application. The applicant was given clear advice as to what information would be required.

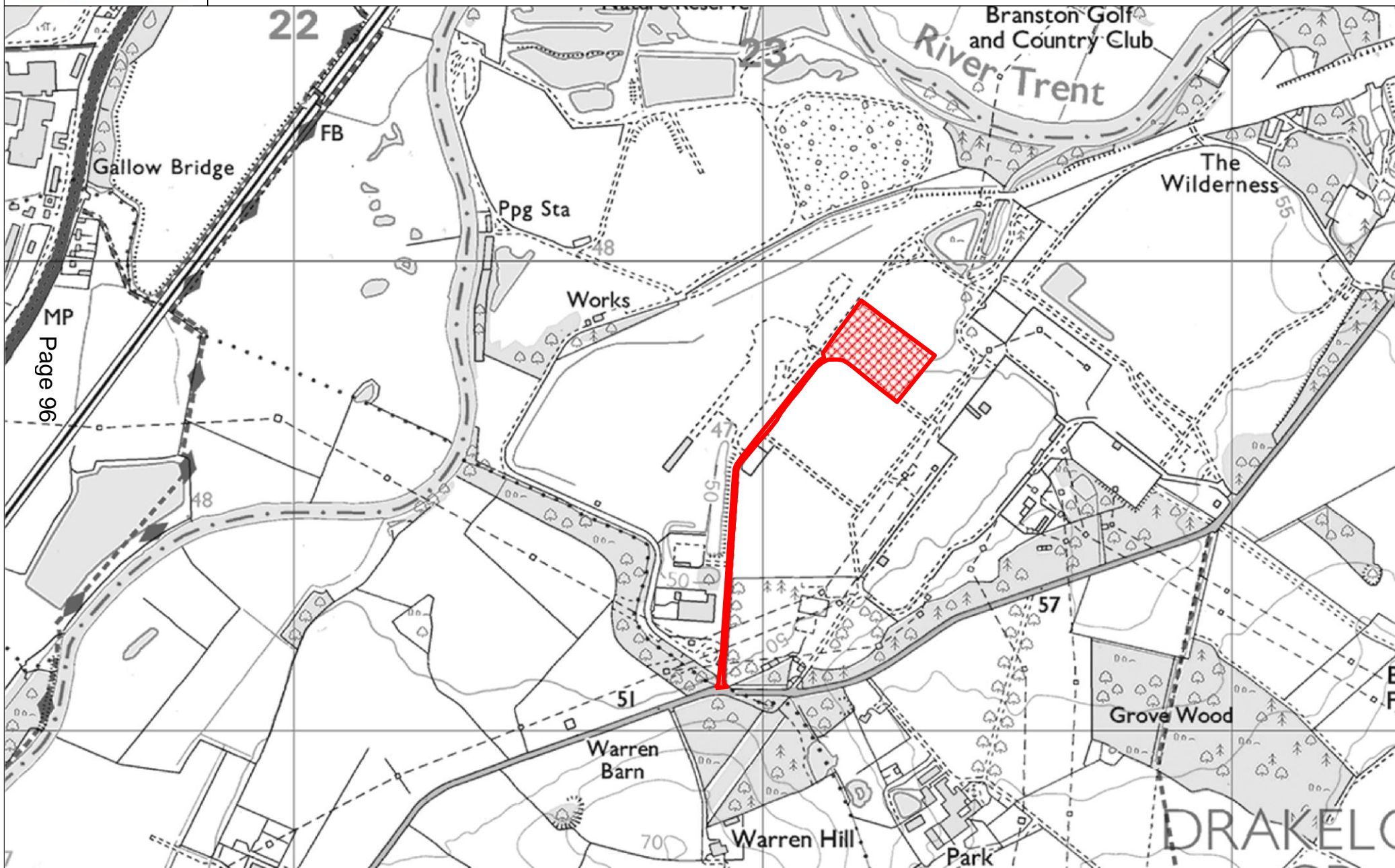
### **Footnote**

#### **Environment Agency Advice to Applicant**

- 1) The applicant will need to ensure it has contacted the Environment Agency with regards to its permit as officers may have comments to make regarding the proposed changes under the Environmental Permitting Regulations.

**Executive Director – Economy, Transport and Environment**

### CW9/0319/108 - Land at Former Drakelow C Power Station, Drakelow



MP  
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DRAKELO



**Agenda Item No. 4.3**

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY – PLANNING COMMITTEE**

**8 July 2019**

Report of the Executive Director – Economy, Transport and Environment

**3 PROPOSED DIVERSION OF PUBLIC FOOTPATH NO. 11 – PARISH OF CHISWORTH**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Diversion Order (“Diversion Order”) for the permanent diversion of Public Footpath No. 11 in the parish of Chisworth in the interests of the landowners.

(2) **Information and Analysis** The County Council has received an application for the permanent diversion of Public Footpath No.11 in the parish of Chisworth, in the interests of the landowners, to take the path away from a livestock handling and feeding area, thus enabling the landowners to manage their land more effectively.

The line of the path is currently obstructed by a barn building for which planning permission was granted by the local planning authority (High Peak Borough Council) in 2006. No legal order to formally divert the path was processed in conjunction with the planning permission, and a Diversion Order has now been applied for by the landowners to resolve the issue of obstruction, and to take the path away from the structure to enable better management of the land.

If the Diversion Order takes effect, it will divert approximately 260 metres of Public Footpath No. 11, shown on plan (ref: TE/CH/X4255/Cttee/2019) as a solid bold line between points **A-B**, to a line shown as a bold broken line between points **A-C**. The new path will be approximately 206 metres long with a recorded width of 2 metres and a natural grass surface.

The Local Members, Councillor J Wharmby and Councillor G Wharmby, High Peak Borough Council and Chisworth Parish Council were consulted and offered no objections to the proposal.

Objections were raised to the proposal from other parties on the grounds that the barn, which currently obstructs the public footpath, should not have been granted planning permission. This does not meet the criteria for Section 119 of the Highways Act 1980 objections, as the objection does not relate to the impact of the diverted route on the convenience and enjoyment for members

of the public, nor does it indicate any impacts of diverting the path upon the land served by the existing or proposed path alignment.

Further comments were raised in relation to the surface of the proposed alternative path, which would have a natural grass surface, and could become boggy due to wet weather and the exposed nature of the land. However, the existing public footpath also has a natural ground surface and the diverted path would reduce the amount of walking on this surface. The County Council has had no previous reports of issues with the existing path surface. Should such reports be made to the County Council, then appropriate measures would be taken to alleviate the impact on path users. It was suggested that a constructed surface path be installed to address potential surface issues, however, this is not deemed to be appropriate given the rural landscape of the area.

(3) **Financial Considerations** The applicant has agreed in writing to defray all of the costs in respect of making and advertising the Diversion Order and bringing the new route into a suitable condition for public use. This includes officer time in processing the application and the installation of a way-marker post. The overall cost is estimated to be in the region of £2,000.

(4) **Legal Considerations** Derbyshire County Council may make an Order under Section 119 of the Highways Act 1980:

- 1) Where it appears to a council as respects a footpath or bridleway in their area that, in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted (whether on to land of the same or of another owner, lessee or occupier), the council may, subject to subsection (2) below, by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order,—
  - (a) create, as from such date as may be specified in the order, any such new footpath or bridleway as appears to the council requisite for effecting the diversion, and
  - (b) extinguish, as from such date as may be specified in the order the public right of way over so much of the path or way as appears to the council requisite as aforesaid.
- 2) A public path diversion order shall not alter a point of termination of the path or way—
  - (a) if that point is not on a highway, or
  - (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
- (6) The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to

be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) the diversion would have on public enjoyment of the path or way as a whole,
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
- (c) any new public right of way created by the order would have as respects the land over which the right is so created and any land held with it.

Research has concluded that it is expedient to make the necessary Diversion Order because:

**Whether it is in the interests of the owner of the land or of the public that the footpath should be diverted**

The diversion of the public footpath is seen to be in the interest of the landowners, to take the path away from a livestock handling and feeding area, thus enabling the landowners to manage their land more effectively.

The path is obstructed by a barn building and is therefore not accessible along its entire length. The diversion of the path onto an unobstructed alignment will benefit the landowners by ensuring they are able to retain the barn, and benefit the public by providing an unobstructed footpath for use.

**Whether the diverted footpath will (or will not) be substantially less convenient to the public**

The diverted footpath would have a length of 206 metres, the existing path has a length of 260 metres. The termination point of the path would be moved approximately 100 metres southwards along the same public footpath meaning a total increase in walking distance of 46 metres. This is not seen to be a substantial increase in distance and therefore satisfies the convenience test.

**The effect the diversion would have on the public enjoyment of the footpath as a whole**

Part of the existing footpath is not currently accessible due to a barn building which has been constructed on the line of the path, however, when assessing proposals to divert a footpath, obstructions should be ignored and the situation assessed as if the route were open.

The existing line of the path crosses an open field and has a natural ground/grass surface which is prone to becoming muddy during wetter periods. The diverted footpath would require a reduced amount of walking over the field and would provide a more direct link onto Public Footpath No. 4, which has a stoned surface and provides a better walking surface all year round.



The diverted footpath would not cross the stone wall to the north of the barn, and would therefore not require a stile like the existing footpath. This would improve the accessibility of the route in accordance with the Equality Act 2010.

The diverted footpath would be on a similar alignment to the existing path, and therefore the views of the surrounding landscape and general feel of the path would be unchanged.

Overall, it is seen that the diversion would have a positive impact on the public's enjoyment of the route, by providing a better walking surface, removing a limitation from the line of the path and by maintaining the views and feel of the path.

**The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way**

The diversion would have no known or foreseen adverse consequences in this respect.

**The effect which the new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it**

The land over which the new path will run is within the ownership of the applicants, and no effects are anticipated.

**Whether it is expedient to make the Order**

It is considered that the proposed diversion is in the interests of the landowners and occupiers. The proposed diversion would not be substantially less convenient to the public and would not have an adverse effect on the public's enjoyment of the route as a whole, or adversely effect the land over which the diversion would run or land served by the existing right of way.

(5) **Environmental and Health Considerations** Consideration has been given to the County Council's Rights of Way Improvement Plan in considering this application and preparing this report.

**Other Considerations**

In preparing this report the relevance of the following factors has been considered; prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

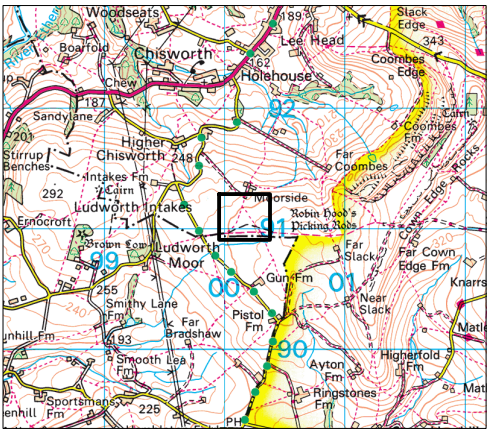
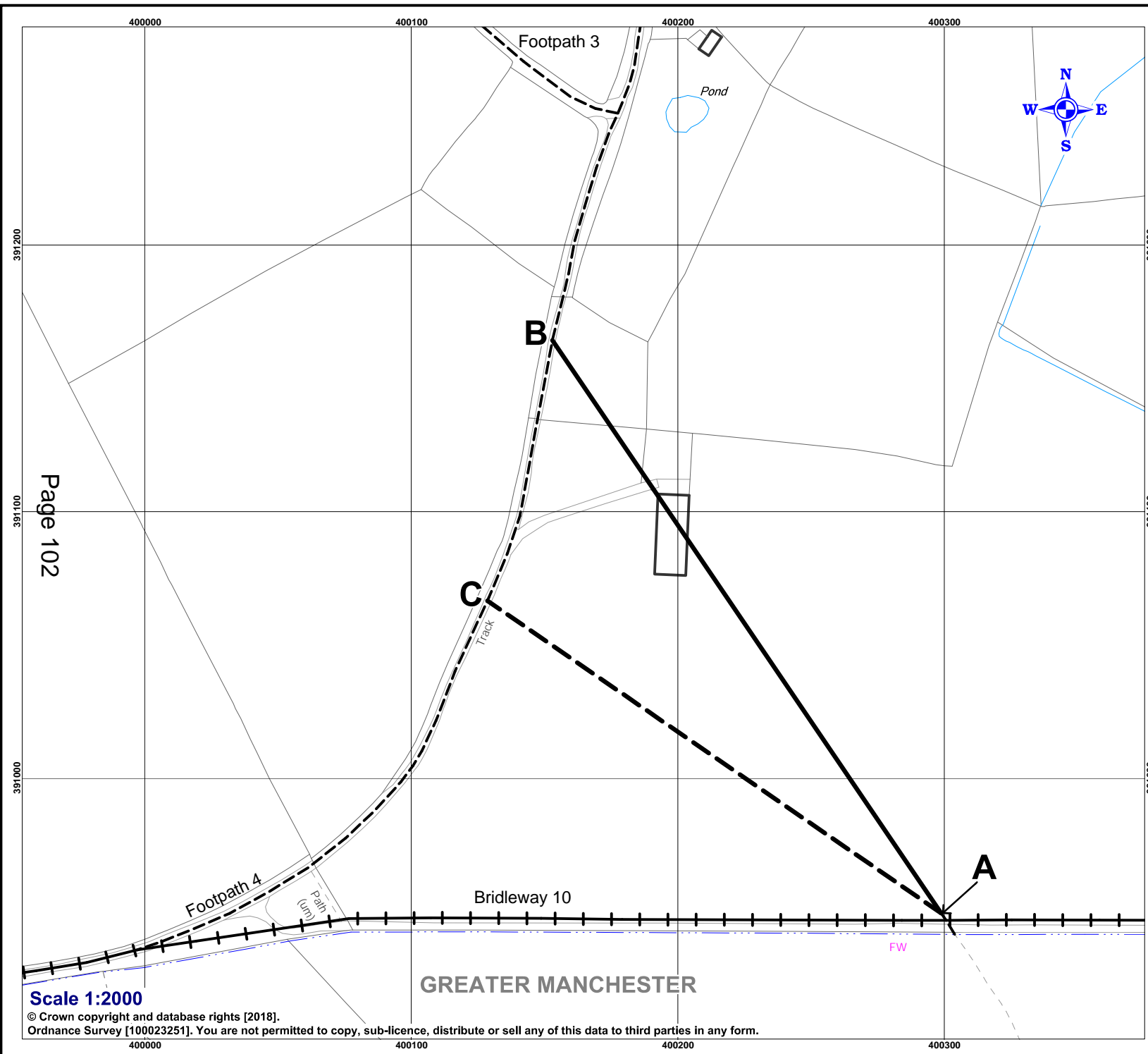
(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - Corinne Hudson, extension 39660.



**(7) OFFICER'S RECOMMENDATIONS** That:

- 7.1 The Director of Legal Services be authorised to make the necessary order to divert Public Footpath No. 11 (Part) in the parish of Chisworth under the provisions of Section 119 of the Highways Act 1980.
- 7.2 Should objections be received to the making of the Order that cannot be resolved, then the matter be forwarded to the Secretary of State for determination.

**Mike Ashworth**  
**Executive Director – Economy, Transport and Environment**



**Highways Act 1980 Section 119**

**Proposed diversion of Public Footpath No. 11 - Parish of Chisworth**

**KEY**

Footpath to be diverted	
Alternative Footpath	
Existing Footpath	
Existing Bridleway	
County Boundary	



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Date: 30 January 2019  
 Ref: TE/CH/X4255/Cttee/2019

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GREATER MANCHESTER

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY – PLANNING COMMITTEE**

**8 July 2019**

Report of the Executive Director – Economy, Transport and Environment

**4 CREATION OF PUBLIC FOOTPATH AT LOCK LANE, SANDIACRE AND PROPOSED EXTINGUISHMENT OF PART OF LONG EATON PUBLIC FOOTPATH NO. 47 (NOW KNOWN AS NO. 68) – LONG EATON, PARISH OF SANDIACRE**

(1) **Purpose of Report** To seek authority for the Director of Legal Services to make a Public Path Creation Order (“Creation Order”) for the creation of a public footpath between Lock Lane and Sandiacre Public Footpath No. 19 (the Erewash Canal towpath) and to make a Public Path Extinguishment Order (“Extinguishment Order”) for the permanent extinguishment of part of Long Eaton Public Footpath No. 68.

(2) **Information and Analysis** A section of path which offers a convenient link from Long Eaton Public Footpath No. 68 to Lock Lane and Sandiacre Public Footpath No. 19 has been identified by Derbyshire County Council. It is proposed that this section of path is the subject of a Creation Order, to ensure it is part of the official footpath network in the interests of the public.

A public footpath is needed in this location. Part of a nearby public footpath, which would otherwise provide access to Sandiacre Public Footpath No. 19, is unusable as it crosses the Erewash Canal at a location where no form of crossing has been provided, and there is some uncertainty over its precise alignment.

The section of path offering the link is already part of the completed Cycle Network (Sandiacre and Breaston). However, the route has no recorded legal status and is not publicly maintainable highway. The formal creation of the route as a public footpath will make a proportion of the width of the route maintainable at public expense, which will be of long-term benefit to the public. It will also protect the public’s right to use the path in the future.

If the Creation Order takes effect, it will create a public footpath of 64 metres as shown as a bold dashed line between points **A-B-C** on the plan. The footpath will have a width of 2 metres, run along on existing, wider stone track.

No maintenance work is seen to be required for this. Derbyshire County Council would maintain the 2 metres as from the Order taking effect.

Long Eaton Public Footpath No. 47 is recorded on the Long Eaton Urban District Definitive Map (relevant date: 1 January 1953). In the 1980s, the path was severed by Bostock's Lane and Springfield Avenue, and renumbered Public Footpaths Nos. 67 and 68 on the working copy of the Definitive Map. The Definitive Map records this path as Public Footpath No. 47. However, the path is referred to in this report as Public Footpath No. 68, to accord with the working copy of the map.

On the Definitive Map, the public footpath is shown crossing the Erewash Canal. The Definitive Statement describes the route as a '*footpath from Breaston Parish Boundary following the Derby Canal to Sandiacre Lock*', there is no bridge recorded in the Statement and, given the scale of the Definitive Map (six inches to the mile), the precise alignment of the path cannot be determined. There remains no structure at this point and, therefore, the public are unable to use the path where it crosses the canal. Pursuing the installation of a bridge crossing at this point does not appear to be expedient, due to the impact it would have on users of the canal, the limited space and strength of the banks at either side of the canal to support a structure of the required size, and the financial costs associated with the implementation of a suitable crossing. It is therefore proposed that the section of path which crosses the canal be extinguished. That part of Public Footpath No. 68 not obstructed by the canal will be retained to form a cul-de-sac path so that the public can continue to access the canal view point at Point **D** on the plan (ref. TE/CH/X3496/Cttee/2019).

If the Extinguishment Order takes effect, the section of Long Eaton Public Footpath No. 68, which crosses the Erewash Canal, will be permanently extinguished, this is an approximately 27 metres section of path shown as a bold solid line between points **D-E** on the plan.

Informal consultation of the proposals was carried out on 15 August 2018. The Local Member, Councillor Hickton, and Erewash Borough Council were consulted and offered no objections to the proposals.

Objections were received to the proposal to create a public footpath between Lock Lane and the canal towpath, however, they do not address the criteria for Section 26 of the Highways Act 1980 creation orders. The objections raised noted that the width of the created path would be restricted due to obstructions such as vehicles; that the movement of heavy vehicles, livestock and speeding traffic in the area would impact upon the public's use and safety; that the creation of the path would lead to increased litter on the route; and that HS2 may impact the area in future leading to increased vehicle traffic from people wishing to use the path to access any new stations.

### **1. Obstruction of the path by vehicles and speeding vehicles**

It was noted that the track is used for parking by residents, and for visitors during events held at one of the properties on a monthly basis. It was also noted that the track is used as a turning area by unauthorised vehicles which would pose a risk to pedestrians using the route. Derbyshire County Council (the Highway Authority) and the Police have the necessary powers to address obstructions and the unauthorised use of vehicles along public footpaths, and therefore these should not significantly impact the level of the convenience and enjoyment of the created route.

### **2. Implications of heavy machinery and livestock movement on path**

Comments were also made regarding the use of the track for the movement of heavy vehicles and livestock in the area, and the impact that this may have on the safety of pedestrians and the fact that, on occasion, the field gate adjacent to Point **A** is closed to control the movement of livestock. If due care and caution is exercised by both vehicle users and pedestrians, the use of authorised vehicles and users should not significantly impact the public's enjoyment or convenience of the route, nor should any authorised vehicle uses or livestock practices be impeded by the public footpath.

### **3. Maintenance liabilities of the path**

Comments regarding the maintenance liabilities for the track were also raised. The recording of a public footpath along the track would clarify these responsibilities. Derbyshire County Council would maintain a 2 metres proportion of the path upon completion of the Order, and litter would be dealt with by Erewash Borough Council.

### **4. Implications of HS2 on path**

The impact that HS2 would have on the usage of the path was also raised, however, the implications of HS2 cannot be accurately determined at this time and may ultimately result in the path improving convenience and enjoyment for local residents even further.

(3) **Financial Considerations** It is proposed that Derbyshire County Council should defray all of the costs in respect of making and advertising the Creation Order and Extinguishment Order, as they are needed to ensure that a connected, recorded footpath network between Lock Lane and the Erewash Canal towpath is provided in the interests of the public. The extinguishment of Public Footpath No. 68 would solve a long-standing issue whereby part of the path is not accessible due to the lack of crossing at the canal. The associated costs are estimated to be in the region of £2,000 which will be covered by the Rights of Way Revenue budget.

The track over which the public footpath is proposed to be created is already constructed and in a state of good repair and therefore no immediate maintenance costs are anticipated in order to bring the path into a suitable condition for public use.

The route would need to be signed should the Order come into effect. One signpost at the entrance to the path from Lock Lane would be required, the approximate cost of this is £145.

Under Section 28 of the Highways Act 1980, compensation may be payable, on the application of an affected landowner, if the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of the land, in consequence of the coming into operation of a public path creation order. As no objection was raised to the order by the affected landowner, in this case, it is not anticipated that any such claim will be submitted.

(4) **Legal Considerations** Derbyshire County Council may make an Order under:

**(b) Section 26 of the Highway Act 1980 (to create a Public Right of Way)**

- (1) Where it appears to a local authority that there is need for a footpath or bridleway over land in their area and they are satisfied that, having regard to:
- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
  - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 [of the Highways Act 1980],
- it is expedient that the path or way be created, the authority may by order made by them and submitted and confirmed by the Secretary of State, or confirmed by them as an unopposed order, create a footpath or bridleway over the land.....
- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.

Pursuant to Section 36 of the Highways Act 1980, the footpath created in consequence of the Creation Order would be maintainable at public expense:

36 (2) Without prejudice to any other enactment (whether contained in this Act or not) whereby a highway may become for the purposes of this Act a highway maintainable at the public expense, and subject to this section and section 232(7) below, and to any order of a magistrates' court under section 47 below, the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense- ..... (d) a highway, being a footpath or bridleway, created in consequence of a public path creation

order or a public path diversion order in consequence of an order made by the Minister of Transport or the Secretary of State under section 247 of the Town and Country Planning Act 1990 or by a competent authority under section 257 of that Act, or dedicated in pursuance of a public path creation agreement.

Research has concluded that it is expedient to make the necessary Order because:

**The extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area**

The path would provide a convenient link from Lock Lane onto Public Footpath No. 68 and Sandiacre Public Footpath No. 19 (the Erewash Canal towpath). There is not currently a recorded public right of way which provides such a link for a considerable distance, and so the creation of a public footpath would greatly reduce the amount of walking which would otherwise be required to get onto these popular routes from Lock Lane.

**The effect which the creation of the path or way would have on the rights of persons interested in the land**

A Land Registry search has been conducted by the County Council. This showed the majority of the land over which the proposed public footpath would run to be unregistered. The owners of the adjacent properties have been consulted and have not come forward to claim the land, or to offer any information regarding its ownership.

The title holders for the remaining land have been consulted and offered no objection to the proposed public footpath creation when directly consulted by email and letter.

It does not appear that the proposed right of way would interfere with any private rights of access.

**(a) Section 118 of the Highways Act 1980 (to extinguish a Public Right of Way)**

- 1) Where it appears to a council as respects a footpath in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a "Public Path Extinguishment Order".

- (2) The Secretary of State shall not confirm a Public Path Extinguishment Order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.
- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
- (6A) The considerations to which—
  - (a) the Secretary of State is to have regard in determining whether or not to confirm a Public Path Extinguishment Order, and
  - (b) a council is to have regard in determining whether or not to confirm such an order as an unopposed order, include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

As regards sub-sections (2) and (6), the proposed Creation will provide a suitable, convenient route from Lock Lane to the canal towpath, between points **A-B-C** on the plan. That part of Public Footpath No. 68, which is proposed to be extinguished, would then no longer be needed for public use, as an alternative footpath would be secured on a more convenient alignment.

With regard to the above mentioned Section (6A)(b), the Rights of Way Improvement Plan, in general, seeks to improve and enhance the public rights of way network. Whilst this proposal would reduce the network (in terms of absolute length), it will create a new public footpath on a similar alignment so the overall impact on the footpath network would be minimal.

(5) **Environmental and Health Considerations** Consideration has been given to the County Council's Rights of Way Improvement Plan in considering this application and preparing this report.

### **Other Considerations**

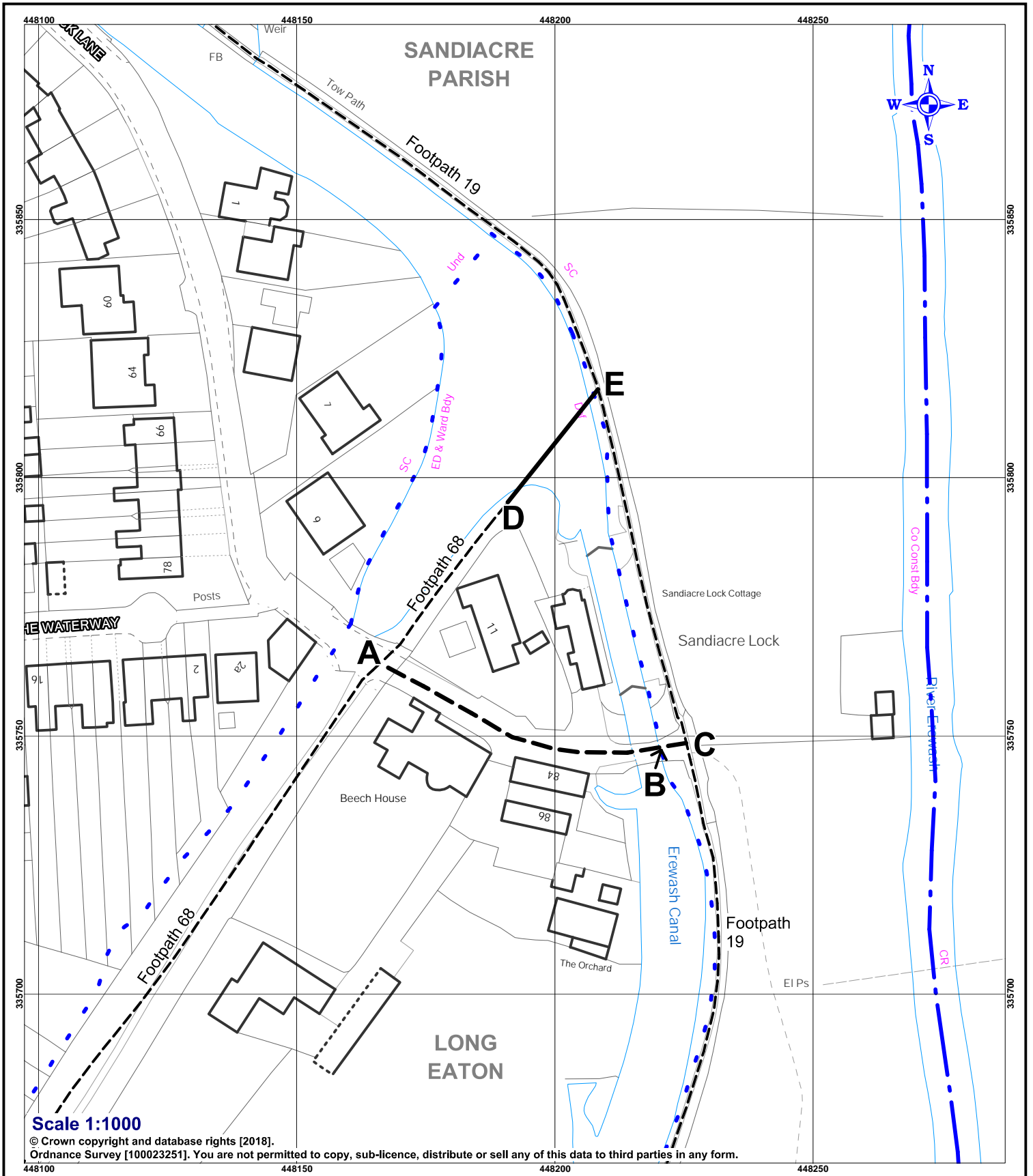
In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** Held on file within the Rights of Way Section of the Economy, Transport and Environment Department. Officer contact details - Corinne Hudson, extension 39660.



- (7) **OFFICER'S RECOMMENDATIONS** That:
- 7.1 The Director of Legal Services be authorised to make an order to create a public footpath between Lock Lane and Sandiacre Public Footpath No.19.
- 7.2 The Director of Legal Services be authorised to make an order to extinguish part of Long Eaton Public Footpath No. 68 upon the coming into effect of that Creation Order.
- 7.3 Should objections be received to the making of either or both of the orders that cannot be resolved, then the matter(s) be forwarded to the Secretary of State for determination.

**Mike Ashworth**  
**Executive Director – Economy, Transport and Environment**



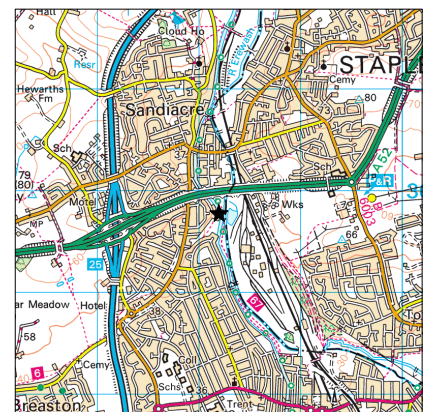
Ref: TE/CH/X3496/Cttee/2019  
Date: 21 January 2019



**Mike Ashworth**  
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DE4 3RY

**Section 26 & 118 Highways Act 1980**  
**Proposed creation of Public Footpath at Sandiacre Lock and proposed extinguishment of part of Long Eaton Public Footpath No. 47 (now known as No. 68) - Long Eaton and Parish of Sandiacre**

<b>Key:</b>	Path to be extinguished	
	Path to be created	
	Existing Footpath	
	Parish Boundary	
	County Boundary	



## DERBYSHIRE COUNTY COUNCIL

## REGULATORY – PLANNING COMMITTEE

8 July 2019

Report of the Executive Director – Economy, Transport and Environment

## 5 Item for the Committee's Information

## CURRENT ENFORCEMENT ACTION

Site	Breach	Action Taken	Comment
BM Tech, Foston. 9.1564.4	Non-compliance with conditions 2 and 3 of planning permission CW9/1110/115.	Condition 2 - Breach of Condition Notice issued 8 March 2012 requiring the cessation of importation and deposit of waste outside the building.  Condition 3 - Breach of Condition Notice issued 8 March 2012 requiring the cessation of use of processing plant outside the building.	Regularising planning application received. Application invalid. Awaiting further information.
Lindrick, Mansfield Road, Corbriggs (formerly MXG)	Unauthorised storage and processing of inert waste.	Enforcement Notice issued 27 June 2013, requiring removal of all waste material before 1 August 2014. A Notice of Relaxation of Enforcement Notice was issued on 23 March 2015. This extended the period of compliance for the processing and removal of waste to 31 January 2016, and the seeding of the exposed perimeter banks to 31 July 2016.  Planning Contravention Notice issued 1 November 2016 (response received). Breach of Condition Notice (Mud on Road) issued 19 December 2016.	Site currently inactive.

		Notice of Relaxation of Enforcement Notice issued on 10 July 2017 extended the period of compliance to 31 December 2017.	
Stancliffe Quarry 3.696R	Condition 43 relating to stability of land adjacent to quarry face. Non-compliance relating to requirement to provide appropriate remediation scheme.  February 2017 Breach involving the removal of stone via unauthorised access, creation of access track and damage to trees covered by Tree Preservation Order.	Breach of Condition Notice served October 2013 requiring submission of a relevant scheme by end of January 2014 (extended date).  Temporary Stop Notice issued 17 February 2017.  Interim Injunction Order granted 31 March 2017.	Site inactive, monitoring as required.
Land west of Park Farm, Woodland Road, Stanton	Without planning permission the change of use of the Land from an agricultural use to a use comprising agriculture and the importation and storage of waste material.	Enforcement Notice issued 14 December 2018	Date notice takes effect – 21 January 2019
Land at Park Hills Farm, Muggington Lane End, Weston Underwood	Without planning permission the deposit of waste materials onto land.	Temporary Stop Notice issued 29 May 2019	

**Mike Ashworth**  
**Executive Director – Economy, Transport and Environment**

**Agenda Item No. 4.7**

**DERBYSHIRE COUNTY COUNCIL  
REGULATORY – PLANNING COMMITTEE**

**8 July 2019**

Report of the Executive Director – Economy, Transport and Environment

**Item for the Committee’s Information**

**7 CURRENT APPEALS/CALLED IN APPLICATIONS**

There are currently no appeals lodged with the Planning Inspectorate.

**Mike Ashworth  
Executive Director – Economy, Transport and Environment**

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