

## 4.0 PLANNING CONTEXT

### Introduction

- 4.1 This Section examines the planning context in relation to the proposed development. First, the planning history of the application site is outlined, and then the proposals are considered against the current planning policy framework.

### Planning History

- 4.2 Extensive coal mining has taken place on and below the application site. The Coal Authority has records of underground workings in seven coal seams below the site at depths of between 110m to 480m below ground level. These workings are reported to have ceased in 1966<sup>1</sup>. It is understood that the tipping of colliery waste commenced at the northern end of the application site in c1952, with the Cuttail Brook culverted in c1967/68<sup>2</sup>. Since then, colliery spoil tipping operations have extended across the application site and a 1973 planning consent permitted the tipping of colliery spoil over the Cuttail Brook culvert to a depth of 45m
- 4.3 Ordnance Survey Maps dating back to 1884 show the presence of the Portland Colliery (Pit Nos 1 to 5) and a number of operational and disused shafts.
- 4.4 In 1985, British Coal Opencast Executive applied for planning permission to extend the existing mine refuse disposal site at Bentinck Colliery and to extract coal by opencast methods (Planning Application Ref. No. 4/23/85/0360). Permission was granted on 8<sup>th</sup> September 1986, subject to 43 conditions. The National Coal Board also submitted a simultaneous planning application (ref. No. 4/23/85/0359) for an extension of the existing mine refuse disposal site at Bentinck Colliery. Although this also received planning permission on 8 September 1986, the British Coal permission (85/0360) is the one which has been implemented. Both planning consents relate to the majority of the former Bentinck Colliery operational area which includes both Bentinck Tip and the Bentinck Void.
- 4.5 This permission covers the majority of the application site, with only the northern section of the Tip lying outwith the consent. The opencast coal extraction operations were conducted in two principle phases (North and South). The northern area was extracted first, covering an area of some 25ha to the north and west of the Boggs Farm Quarry SSSI. The southern area was worked between 1987 and 1989, involving the removal of material to a depth of around 30m.

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<sup>1</sup> Coal Mining Report Dated 24<sup>th</sup> August 1998. Appendix E to Environmental Statement for "An Application for Planning Permission for the Restoration of the Bentinck Tip..." M. J. Carter Associates September 1998.

<sup>2</sup> "Restoration Assessment for Bentinck Tip and Void" Bowman Planton Associates August 2000

- 4.6 Condition 25 of the 1986 planning permission requires that tipping shall be carried out in accordance with the details shown on Drawing 15R-14/39C. The maximum height of the tip is not to exceed 172m AOD. Furthermore, condition 26 limits the waste tipped to that brought to the surface from Annesley-Bentinck Colliery, whilst condition 31 makes provision for an alternative restoration scheme to be submitted should the Annesley-Bentinck Colliery close prior to the completion of the approved tipping scheme.
- 4.7 The Bentinck Tip is also subject to three other consents W/K/1581, W/K/1109 and 4/23/82/0043. It is understood that each of these consents contain conditions requiring the restoration of the site in the event of the cessation of tipping operations.
- 4.8 With the closure of the Colliery early in 2000, it is no longer possible to complete the restoration of the tip in accordance with the provisions of the 1986 planning consent. Moreover, it is not possible create a suitable landform through regrading the tip. Material needs to be imported to the application site to cap the lagoons, and soils are required to facilitate the vegetation of the tip.
- 4.9 In April 2004 Nottinghamshire County Council served a Planning Contravention Notice on the applicants, together with Midland Mining and Viridor Waste Management Limited.

### PLANNING POLICY

- 4.10 Schedule 4 to the 1999 EIA Regulations does not make any specific reference to the inclusion of an assessment of planning policy. However, Chapter 6 of the DTLR Good Practice Guide on the preparation of an ES<sup>3</sup> includes a section on “Policies and Plans”. Paragraph 6.1 states that “An ES should include a section on policies and plans which are relevant to the environmental assessment of the development in question”. The rationale for this is stated as “The objective is to demonstrate how these policy guidelines have been taken into account in developing the project and compiling the ES, and to provide a picture of the decision making context in which the environmental impacts will be evaluated”.
- 4.11 It can be seen that there is some ambiguity between the regulations and the guidance provided by the Government. However it is clear from published guidance that the Government is committed to a plan led system, with the development plan forming the basis of all planning decisions. Section 54A of the Town and Country Planning Act 1990 and more recently Section 38 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) confers a presumption in favour of development proposals which accord with the Development Plan (which is now comprises the Regional Spatial Strategy and the Development Plan Documents taken as a whole<sup>4</sup>), unless material considerations indicate otherwise. Sub Section 5 of Section 38 also states

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<sup>3</sup> Preparation of Environmental Statements for Planning Projects that Require Environmental Assessment: A Good Practice Guide. DETR 1998

<sup>4</sup> Section 38(3) Planning and Compulsory Purchase Act 2004

that, “if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)”.

- 4.12 Furthermore, paragraph 5 of Planning Policy Statement 10 “*Planning for Sustainable Waste Management*” (2005) provides that in considering planning applications for waste management facilities before development plans can be reviewed to reflect the requirements of PPS 10, regard is to be given to the policies in PPS 10 as material considerations which may supersede policies in the development plan.
- 4.13 Accordingly, policy and plans play an important role in determining any planning application. In the spirit of the guidance, therefore, this Section provides an overview of the policies that have been considered in undertaking the EIA.

### **National Policy**

#### *General Considerations*

- 4.14 National Planning Policy Guidance is set out in a series of Planning Policy Guidance Notes (PPGs) and Planning Policy Statements (PPSs), which address general principles and policies together with detailed guidance on particular subjects and land use issues.
- 4.15 The PPGs are to be replaced by the PPSs. At the time of the preparation of this ES, nine PPSs have been formally adopted, replacing PPGs 1, 6, 7, 9, 10, 11, 12, 22 and 23. Drafts of PPS3: “*Housing*” and PPS 25: “*Development and Flood Risk*” were published for consultation on 5 December 2005.
- 4.16 In terms of land use planning constraints, the site is not located within a National Park or Area of Outstanding Natural Beauty (AONB). It also does not directly impinge upon any archaeological or ecological designations of international or national importance. Consequently, many sections of national guidance are not relevant. The site is located within a green belt and lies adjacent to two Sites of Special Scientific Interest (SSSI), meaning that PPG 2 and PPS 9 are of particular note.

#### *PPS 1*

- 4.17 PPS1, issued in 2005, sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system. This PPS replaces Planning Policy Guidance Note 1 “*General Policies and Principles*” (February 1997). PPS1 is supported by a guidance note<sup>5</sup> which provides a general description of key elements of the planning system, including its structure, the determination of planning applications and the Secretary of State's role.

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<sup>5</sup> The Planning System: General Principles”.

- 4.18 Sustainable development is stated as being the core principle underpinning the planning system, and is defined in paragraph 4 as comprising social progress which recognises the needs of everyone; effective protection of the environment; prudent use of natural resources and maintenance of high levels of economic growth. Paragraphs 14 to 26 expand upon these key headings of sustainable development, with paragraph 24 recognising that “*economic development, if properly planned for, can have positive social and environment benefits, rather than negative impacts, and that environmental protection and enhancement can in turn provide economic and social benefits*” and paragraph 26 (iii) stating that planning authorities should not “*impose disproportionate costs, in terms of environmental and social impacts, or by unnecessarily constraining otherwise beneficial economic or social development*”.
- 4.19 It is considered that the proposals sit comfortably with the guidance set out in this document as it ensures that the maximum benefit is obtained from a valuable and scarce resource (namely the landfill void), provides for the reclamation of a large despoiled colliery tip, whilst any impacts upon the local community or natural environment are controlled and limited to acceptable levels.

### PPG 2

- 4.20 The application site is situated within a Green Belt, and thus PPG 2 “Green Belts” (1995) needs to be considered.
- 4.21 Paragraph 1.5 states that there are five purposes of including land in Green Belts as follows:
- *to check the unrestricted sprawl of large built-up areas;*
  - *to prevent neighbouring towns from merging into one another;*
  - *to assist in safeguarding the countryside from encroachment;*
  - *to preserve the setting and special character of historic towns; and*
  - *to assist in urban regeneration by encouraging the recycling of derelict and other urban land.*
- 4.22 Once defined, land within Green Belts is regarded as having the potential to fulfil a positive function by facilitating the achievement of a series of planning objectives. These objectives are set out in paragraph 1.6 of PPG2, and are:
- *to provide opportunities for access to open countryside for the urban population;*
  - *to provide opportunities for outdoor sport and outdoor recreation near urban areas;*
  - *to retain attractive landscapes, and enhance landscapes, near to where people live;*
  - *to improve damaged and derelict land around towns;*
  - *to secure nature conservation interest; and*
  - *to retain land in agricultural, forestry and related uses.*

- 4.23 Given the purposes of Green Belts the guidance establishes a presumption against 'inappropriate' development except in very special circumstances such as need and restoration (paragraph. 3.1), and provides advice of the consideration of planning applications. Paragraph 3.11 provides that development such as mineral operations and other development may not be inappropriate, provided that high environmental standards are maintained. The principle rationale for this being that such operations are transient in nature. Paragraph 3.12 notes that the carrying out of engineering and other operations (which would include landfilling) would be inappropriate unless they maintain openness and do not conflict with the five purposes (refer to paragraph 4.21 above). Paragraph 3.16 identifies the valuable opportunities afforded by Community Forests in improving the environment around towns and providing for recreation and wildlife. In common with mineral operations, landfill sites need to be located away from sensitive land uses, generally on the urban fringes. The nature of waste management operations, like mineral operations, can check urban sprawl. Where development occurs in the Green Belt (including the tipping of waste) paragraph 3.13 emphasises that *"it should, so far as possible, contribute to the achievement of the objectives for the use of land in Green Belts"* as listed in paragraph 1.6.
- 4.24 PPS 10 (refer to paragraph 4.49 below) at paragraph 3 (Key Planning Objectives) recognises that Green Belts should be protected, but at the same time *"recognise the particular locational needs of some types of waste management facilities when ... determining planning applications"*. This is expanded upon in Section 8.4 of the Companion Guide to PPS 10<sup>6</sup> which states that Local Plan policies need not impose a total blanket-ban on the establishment of waste management facilities in the Green Belt. It may be appropriate to grant planning permission if special circumstances can be demonstrated which outweigh the harm caused by the development.
- 4.25 The proposed development would secure the complete reclamation of a large area despoiled by previous mineral extraction and tipping, providing a greatly improved landscape which is consistent with the surrounding landscape character, whilst also providing ecological interest and diversity. The proposals include the erection of a building necessary to provide restoration materials for the reclamation of the Tip: it has been designed (to reflect other agricultural buildings in the area) and located so as to minimise any impact. Moreover, the proposed operations would be conducted over the shortest timeframe possible. Overall, it is considered that the proposals would provide long term benefits for the Green Belt which outweigh any short term impacts. Further consideration of local green belt policy is set out in paragraphs 4.102 *et seq* below.

### PPS 7

- 4.26 PPS7 states in paragraph 1 that decisions on development proposals should be based on sustainable development principles and that *"good quality,*

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<sup>6</sup> Planning for Sustainable Waste Management: Companion Guide to PPS 10. living Draft to support DEFRA/ODPM Seminars. November 2005

*carefully-sited accessible development within existing towns and villages should be allowed where it benefits the local economy and/or community". It goes on to state that "accessibility should be a key consideration in all development decisions" and that "priority should be given to the re-use of previously-developed ('brownfield') sites"*

- 4.27 in connection with "Best and Most Versatile" (BMV) agricultural land this new policy document offers a greater degree of flexibility. Paragraph 28 simply states that the presence of BMV agricultural land is to be taken into account alongside other sustainability issues. Paragraph 29 then adds that it is up to individual planning authorities to decide on whether BMV agricultural land should be developed.
- 4.28 The main body of the application site is devoid of soil cover and is not in agricultural use: the construction of the new access road would though affect agricultural land. The Agricultural Land Classification of the application site has been deduced from a review of published data and site investigations. The proposed development includes around 1 ha of BMV agricultural land (classed as either Grade 2 or Grade 3a). This is considered further in Section 6 of this ES.

### PPS 9

- 4.29 Paragraph 1 of PPS 9<sup>7</sup> sets out six "Key Principles" Regional planning bodies and local planning authorities should adhere to in formulating planning policies or determining planning applications. In relation to the latter, planning decisions should "aim to maintain, and enhance, restore or add biodiversity and geological conservation interests" and "appropriate weight is attached to designated sites of international, national and local importance". In addition, the sixth principle adds that:

*"The aim of planning decisions should be to prevent harm to biodiversity and geological conservation interests. Where granting planning permission would result in significant harm to those interests, local planning authorities will need to be satisfied that the development cannot reasonably be located on any alternative sites that would result in less or no harm. In the absence of any such alternatives, local planning authorities should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought.*

- 4.30 Paragraphs 6 to 12 consider various sites of biodiversity and geological conservation value. Of particular relevance to this application are paragraphs 7 and 8, which address SSSIs; and paragraph 9, which considers Regional and local sites. In relation to SSSIs, planning permission should not normally be granted for a development proposal which has an adverse impact upon the designation. Furthermore, paragraph 8 provides that "Where an adverse

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<sup>7</sup> Planning Policy Statement 9 "Biodiversity and Geological Conservation". ODPM 2005

effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs.

- 4.31 Finally, paragraphs 15 and 16 consider species protection and recognise that many species are afforded statutory protection.
- 4.32 The application site abuts SSSIs to the east and west, and, despite being allocated in the WLP for landfill, a substantial part of the Void has been designated as a SINC in the Ashfield Local Plan Review adopted in November 2002. There are also protected species within the site. The development proposals have been designed from the outset to avoid any impact on the adjoining SSSIs. Its development would inevitably involve the loss of the recently designated SINC, whilst this is a material consideration it is not a basis for refusing planning permission as there are no other alternative sites (as has been demonstrated through the preparation of the Waste Local Plan) and substantial measures have been introduced within the development scheme to ameliorate the impacts. Moreover, the proposals would lead to a significant improvement to the current impoverished state of the Tip. Protected species are again a material consideration but PPG 9 indicates that planning conditions or obligations can be used to secure the protection of species.
- 4.33 Section 13 of this ES should be referred to for a detailed consideration of the ecological interests within and surrounding the application site and the measures proposed to ameliorate the loss of habitat.

### *Other PPGs and PPSs*

- 4.34 The other PPGs/PPSs to have any bearing on the proposed development of the application site are:
- PPS 10 "*Planning and Sustainable Waste Management*"
  - PPG 13 "*Transport*"
  - PPG 15 "*Planning and Historic Environment*"
  - PPG 16 "*Archaeology and Planning*"
  - PPS 22 "*Renewable Energy*"
  - PPS 23 "*Planning and Pollution Control*"
  - PPG 24 "*Planning and Noise*"
- 4.35 PPSs 10, 22 and 23 are considered elsewhere within this Section (paragraphs 4.49 *et seq* refer), whilst the other policy documents are considered within the specific sections relating to the particular environmental topic. In addition, land use planning constraints in respect of the application site are considered below in the examination of local policies.

### National Policy Considerations for Waste Management Operations

- 4.36 National policy relating to waste management, like many other matters including Environmental Impact Assessment, is derived from a number of European Directives. These include for example the Landfill Directive (99/31/EC).
- 4.37 Historically, waste strategy has focussed on controlling waste disposal to prevent unacceptable harm to human health and the environment. The introduction of the Environmental Protection Act 1990 changed the focus to the management of waste from “cradle to grave”, introducing concepts such as Best Available Techniques Not Entailing Excessive Cost (BATNEEC) and “Duty of Care”. Most recently, the Landfill Directive (which has been partially implemented in the Landfill (England and Wales) Regulations 2002) aims to reduce the volumes of biodegradable municipal waste that is landfilled.
- 4.38 National policy on waste management comprises a strategic statement in the form of the White Paper “*Waste Strategy 2000*” (Cm 4693-1)<sup>8</sup>, and Planning Policy Statements 10 “*Planning for Sustainable Waste Management*” (2005) and 23 “*Planning and Pollution Control*” (2004).

### *Waste Strategy 2000 (As Amended)*

- 4.39 Waste Strategy 2000 aims to manage waste and resources better than is currently the case with the objective of delivering more sustainable development. The essential element of the strategy is to reduce the volume of biodegradable municipal solid waste that is deposited at landfill sites, in line with the requirements of the Landfill Directive. The means by which the strategy is to be fulfilled is inevitably complex. However, the Government has set a range of targets to deliver diversion of municipal waste from landfilling and to measure the effectiveness of the strategy.
- 4.40 The key targets in Waste Strategy 2000 are:
- to reduce the amount of biodegradable municipal waste that is landfilled to 75%, 50% and 35% of 1995 levels by 2010, 2013 and 2020 respectively;
  - to recover<sup>9</sup> value from 40% of municipal waste by 2005;
  - to recover value from 45% of municipal waste by 2010;
  - to recover value from 67% of municipal waste by 2015;
  - to recycle or compost at least 25% of household waste by 2005;
  - to recycle or compost at least 30% of household waste by 2010;
  - to recycle or compost at least 33% of household waste by 2015; and

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<sup>8</sup> As amended by “Changes to Waste Management Decision Making Principles in Waste Strategy 2000”. DEFRA, July 2005

<sup>9</sup> “recover” means to obtain value from wastes through either recycling; composting; other forms of material recovery (e.g. anaerobic digestion); energy recovery (combustion with direct or indirect use of the energy produced, manufacture of refuse derived fuel, gasification, pyrolysis or other technologies).

- to reduce the amount of industrial and commercial waste landfilled to 85% of 1998 levels by 2005;

4.41 As part of the sustainable management of waste, the strategy emphasises that the reliance on landfill as an option cannot continue in the way that it has in the past. The statutory targets will mean that more biodegradable waste will be diverted to recycling and recovery facilities, such as Materials Recycling Facilities (MRFs) or Energy from Waste (EfW) plants. However, after recycling and recovery, there will still be a need to dispose of residual waste streams.

4.42 This change in approach has been prompted in part by shortages of suitable sites for waste disposal due to land use constraints. This applies particularly where the availability of void space in former mineral workings is decreasing. Notwithstanding this, the Government acknowledges in the strategy:

*“...that properly managed landfill can be a suitable disposal option for a wide range of wastes....landfill will play a role in any future system of sustainable waste management, but it will be a much smaller role”. (Part 1, para 1.10).*

4.43 Chapter 3 in Part 2 of the Waste Strategy 2000 sets out the issues relating to the decision making framework and has been substantially amended following the publication of PPS 10. Paragraph 3.2 sets out the objectives of waste management decisions, namely:

- Reducing the environmental impact of waste by moving waste management up the waste hierarchy;
- Managing waste in ways that protect human health and the environment and in particular:
  - Without risk to water, air, soil and plants and animals;
  - Without causing a nuisance through noise or odours;
  - Without adversely affecting the countryside or places of special interest;
  - Disposing of waste at the nearest appropriate installation, by means of the most appropriate methods and technologies.

4.44 Paragraph 3.3 then adds:

- Individuals, communities and organisations should take responsibility for their waste;
- In taking decisions there should be consideration of alternative options in a systematic way;
- Effective community engagement should be an important and integral part of the decision making process;
- The environmental impacts for possible options should be assessed looking at both the long and short term;
- Decisions should seek to deliver the environmental outcomes that do most to meet the objectives in paragraph 4.43 above, taking account of what is feasible and what is an acceptable cost.

- 4.45 Finally, at paragraph 5.95 of Part 2 of the Waste Strategy it is recognised that landfill remains a viable waste management option which will be the BPEO for certain wastes in particular circumstances:

*“Reducing the amount of waste going to landfill is compatible with its continued use as a viable waste management option. Properly regulated landfill can go some way to mitigating the environmental impact of disposing of waste to land, for example, methane generated from the decomposition of waste in landfill sites can be collected and used to generate power, and landfill can be a means of restoring full landscape use after activities such as quarrying. Moreover, landfill will remain the Best Practicable Environmental Option for certain wastes in certain circumstances, and indeed may be the only option for wastes such as heavy sludges from some industrial processes”..*

- 4.46 It should be noted that, following the introduction of PPS 10 BPEO has now been removed from the determination of planning applications. In this respect, the Government states<sup>10</sup>

*“The role of the Best Practicable Environmental Option process in decision-making has also been reviewed. In future, the tenets that underlie BPEO will be delivered in spatial planning through plan-led strategies that drive waste management up the waste hierarchy...”*

- 4.47 The Waste Strategy for the East Midlands Region, which is discussed in Section 5, includes an assessment of BPEO for all of the regional waste streams. As the new Local Development Plan for Nottinghamshire has yet to be adopted, BPEO is also considered in within Section 5.

### *Review of England’s Waste Strategy: A Consultation Document*

- 4.48 A major consultation on the existing waste strategy for England commenced in February 2006 through the publication of *“Review of England’s Waste Strategy: A Consultation Document”*. The Ministerial press release<sup>11</sup> provides a useful summary of the measures being proposed, which include:

- Greater focus on producing less waste in the first place by developing a greater emphasis on eco-design, increased engagement with businesses in waste prevention, including more agreements with businesses to take greater responsibility for their products at the end of their life.
- Recovering from resources from waste from businesses through new targets for a reduction in the amount of commercial and industrial waste landfilled, more help for small businesses to reduce and recycle their waste and a more joined up approach in managing waste from different sources, facilitated by local authorities and regional bodies.

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<sup>10</sup> Joint Ministerial Statement by Ben Bradshaw, the Parliamentary Under Secretary for Local Environment, and Yvette Cooper, the Minister for Housing and Planning, on Sustainable Waste Management

<sup>11</sup> Defra News release 68/06 dated 14/02/06. source: <http://www.defra.gov.uk/news/2006/060214c.htm>

- Simplifying the regulatory regime and making it more proportionate through reforms to the permitting and exemption systems, better guidance and communication, and more targeted risk-based enforcement.
- Strengthened and targeted enforcement action to tackle waste crimes from fly tipping to illegal exports to prevent legitimate businesses from being undermined by free-riders.
- Developing a recycling culture by shifting our thinking so that the recycling of resources is part of our everyday activities whether at home, at work or during leisure.
- Making proper use of new investment to recover energy from waste as an alternative to landfill but not at the expense of practical waste prevention and recycling by seeing a more modest growth than original estimates. Waste Strategy 2000 set a target for 67% recovery of waste by 2015 by recycling, composting, energy from waste (incineration, pyrolysis and gasification) and digestion with at least 33% composting and recycling. The new strategy proposes the same overall target of 67% recovery target in 2015 but with much higher levels (45%) of recycling and composting.
- Establishing Sustainable Waste Programme Board to co-ordinate and drive delivery of the strategy.

### PPS 10

4.49 PPS 10 was published in July 2005 replacing PPG 10 “*Planning and Waste Management*”, and is accompanied by a Companion Guide “*Planning for Sustainable Waste Management*”<sup>12</sup>. PPS 10 states that the overall objective of the Government’s policy on waste is to protect human health and the environment by producing less waste and by using it as a resource wherever possible. PPS 10 sets out the key planning objectives; decision making principles; and advice on preparing Regional Spatial Strategies, Local Development Documents and determining planning applications. Furthermore, Annex E to PPS 10 provides advice on the locational criteria for siting waste management facilities.

4.50 Key Planning objectives are stated as including:

- help deliver sustainable development through driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be adequately catered for;
- provide a framework in which communities take more responsibility for their own waste, and enable sufficient and timely provision of waste management facilities to meet the needs of their communities;
- help secure the recovery or disposal of waste without endangering human health and without harming the environment, and enable waste to be disposed of in one of the nearest appropriate installations;

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<sup>12</sup> Living Draft to Support DEFRA/ODPM Seminars. November 2005

- reflect the concerns and interests of communities, the needs of waste collection authorities, waste disposal authorities and business, and encourage competitiveness;
- protect green belts but recognise the particular locational needs of some types of waste management facilities when defining detailed green belt boundaries and, in determining planning applications, that these locational needs, together with the wider environmental and economic benefits of sustainable waste management, are material considerations that should be given significant weight in determining whether proposals should be given planning permission.

4.51 The objectives therefore retain the principles of self sufficiency and the proximity principle contained within PPG 10.

4.52 In connection with the determination of planning applications Paragraph 22 advises that:

*“Development plans form the framework within which decisions on proposals for development are taken. It is important that plans are kept up-to-date and properly reflect national policy.”*

and, expects that (paragraph 23):

*“In the interim period before the development plan is updated to reflect the policies in this PPS, planning authorities should ensure proposals are consistent with the policies in this PPS and avoid placing requirements on applicants that are inconsistent.”*

4.53 This specific policy should be read in the context of the "Decision-Making Principles" which (paragraph 5) require waste planning authorities to adhere to:

*“controls under the planning and pollution control regimes should complement rather than duplicate each other and conflicting conditions should be avoided”; and*

*“in considering planning applications for waste management facilities before development plans can be reviewed to reflect this PPS, have regard to the policies in this PPS as material considerations which may supersede the policies in their development plan. Any refusal of planning permission on grounds of prematurity will not be justified unless it accords with the policy in The Planning System: General Principles.”*

4.54 The key policy requirement on planning authorities is to ensure proposals are consistent with the policies in PPS10. The overriding concern of the policies in PPS10 is the delivery of the "key planning objectives", as set out in paragraph 4.50 above. In addition, paragraph 21 of PPS 10, together with Annex E and Section 7.5.2 provide guidance on identifying suitable sites for waste management facilities. Paragraph 21 (i) provides that consideration should be given to:

- the extent to which they support the policies in PPS 10;
- the physical and environmental constraints on development, including existing and proposed neighbouring land uses (see Annex E);
- the cumulative effect of previous waste disposal facilities on the well-being of the local community, including any significant adverse impacts on environmental quality, social cohesion and inclusion or economic potential;
- the capacity of existing and potential transport infrastructure to support the sustainable movement of waste, and products arising from resource recovery, seeking when practicable and beneficial to use modes other than road transport.

4.55 Annex E to PPS 10 provides 12 more detailed considerations and focus on environmental concerns such as safeguarding the water environment; visual intrusion; protecting the natural and cultural environments; traffic; air quality (dust and odour) and noise. The issues contained in Annex E have been fully addressed in Sections 6 to 16 of this ES in the context of land use planning.

4.56 Finally, unlike its predecessor, PPS10 does not require BPEO and specifically advises that "*planning authorities should ..... avoid placing requirements on applicants that are inconsistent.*" The companion guide at Section 8.6 provides further advice, and this is considered in Section 5 of this ES.

### PPS 22

4.57 PPS 22 "*Renewable Energy*" (August 2004) replaces PPG 22 (1993). The introduction to this PPS recognises that energy from landfill gas is included within the scope of the renewable energy. One of the key objectives of Government Policy is stated on page 4 of the PPS as being the reduction of "*greenhouse*" gases. Reference is made in the document to development plan policies being more positive, promoting and encouraging the development of renewable energy resources. Paragraph 16 provides that renewable energy developments may be located in rural areas. Government's policy for developing renewable energy sources, and the benefits that follow, must be weighed against policies for protecting the environment.

### PPS 23

4.58 PPS23 was published in 2004 and considers the how pollution should be considered within the planning system and the relationship between planning and pollution control legislation. It is accompanied by two Annexes which address Pollution Control, Air and Water Quality (Annex 1) and Development on Land Affected by Contamination (Annex 2).

4.59 As set out in Section 1, PPS 23 gives advice on the relationship between the different planning development and pollution control regimes. The planning and pollution control systems are both designed to protect the environment from the potential harm caused by development and operations and therefore complement each other.

- 4.60 Appendix A of PPS23 provides further guidance on matters to be considered in relation to determining individual planning applications.

### **National Policy Considerations for Mineral Development**

- 4.61 The development proposals, which have been set out in detail in Section 3, do not involve any new mineral development. However, the application site is a former open cast coal site and colliery tip and thus sections of National policy statements relating to minerals will be relevant. Mineral Planning Guidance Notes (MPGs) and the new Mineral Policy Statements (MPSs) set out statements of Government policy in respect of minerals development. The MPGs and MPS most relevant to the planning application are MPG1: "*General considerations and the Development Plan System*" (1996); MPG 5 "*Stability in Surface Mineral Workings and Tips*" (2000) MPG 7 "*The Reclamation of Mineral Workings*" (1996); and MPS 2 "*Controlling and Mitigating the Environmental Effects of Minerals Extraction in England*" (2005).

#### **MPG 1**

- 4.62 The development proposals are a direct consequence of the need to restore a former mineral working site, and some aspects of the MPG 1 are relevant to the proposal. There are several references throughout the guidance (e.g. paragraphs 5 (iv), 35 (iv), 71) which indicate that in furthering sustainable minerals development "*land taken for mineral extraction...should not become derelict and should be reclaimed to a standard suitable for beneficial after use as soon as possible*". In a similar vein, paragraph 75 notes that "*MPAs should take account of suitable opportunities for landfill disposal of controlled wastes...which may be created by voids from mineral extraction.*"
- 4.63 The proposals are designed to bring an unrestored and largely derelict mineral site back to a beneficial after use compatible with Green Belt and Greenwood Community Forest objectives, whilst at the same time satisfying an identified need for landfill capacity. In doing this, it is compatible with the relevant strands of the guidance in MPG 1.

#### **MPG 5**

- 4.64 MPG 5 advises that MPAs need to consider stability in relation to surface mineral workings and tips and, where appropriate, that planning applications/restoration/landscaping schemes should be accompanied by a design report to demonstrate that slopes will be stable. It also provides a good practice guide to the design, assessment and inspection of excavated slopes and tip structure.
- 4.65 In connection with this application, the mineral excavation and backfilled slopes of the mineral void are already in existence. The proposal to backfill the void will clearly result in the enhanced stabilisation of most of the void

faces. Nevertheless, the advice of MPG 5 has been taken into account, and is considered in Section 6 of the ES.

### *MPG 7*

- 4.66 MPG 7 provides guidance amongst other matters on the contribution which reclaimed mineral sites can make to the Government's policies for sustainable development, including: maintaining the long-term quality of landscape and creating or enhancing sites for nature conservation (paragraph 2) and facilitating the development of "Community Forests" (paragraph 18). It also addresses the reclamation of sites using controlled wastes; the need for landfill engineering requirements to be integrated with the requirements on objectives for restoration (paragraph A17) and the use of "interim restoration" to avoid disturbance of the final soil profile where gas and leachate control systems are to be installed (paragraph A19).

### *MPS 2*

- 4.67 MPS 2 sets out the policies and considerations in relation to the environmental effects of minerals extraction that the Government expects Mineral Planning Authorities in England to follow when preparing development plans and in considering applications for minerals development. It is accompanied by separate technical annexes on particular environmental effects, of which Annex 1 "Dust" and Annex 2 "Noise" are published alongside the MPS. From paragraph 5 of the main text, and paragraph 2.4 of Annex 2, it is clear that the guidance is equally applicable to waste management developments. Annex 2 seeks to provide guidance on determining acceptable noise limits from a development, together with advice on good environmental practice for keeping noise emissions to an environmentally acceptable level. Section 10 of this statement specifically addresses the issue of noise, including the provisions of MPS 2.

## **The Development Plan**

### *Planning and Compulsory Purchase Act 2004*

- 4.68 As set out at the beginning of this Section, by virtue of Section 38 of the PCPA 2004 the Regional Spatial Strategy (RSS) now forms part of the Development Plan. In addition, the PCPA 2004 has introduced new requirements on Local Planning Authorities to prepare a new portfolio of Development Plan Documents (DPDs) that together will form the Councils Local Development Framework (LDF). These Development Plan Documents will replace the existing Structure and Local Plans.
- 4.69 To maintain continuity in the development plan system during transition, the new arrangements provide for the existing adopted Structure Plan and Waste Local Plan to be 'saved' for a period of three years from commencement of the 2004 Act. During this three year period new DPDs are to be prepared to replace all or parts of the saved plan.

- 4.70 Under the new legislation, Nottinghamshire County Council will be responsible for preparing a LDF for minerals and waste (the seven District Councils will prepare LDFs covering all other types of development). Nottingham County Council has started work on preparing the new LDF, which will be known as the “*Minerals and Waste Development Framework*”. In June 2005 it produced the Nottinghamshire Minerals and Waste Development Scheme (MWDS), which was updated in June 2006. This document provides that the Adopted Structure Plan will be saved for a period of three years, until it is replaced by the Regional Spatial Strategy. In addition, the MLP will be saved in full until it is replaced by the minerals DPD over the next three to four years.
- 4.71 For the area within which the application site is located the Development Plan therefore comprises the following documents:
- The Regional Spatial Strategy for the East Midlands (RSS 8 – March 2005)
  - Nottinghamshire and Nottingham Joint Structure Plan (Adopted Version – February 2006);
  - Nottinghamshire and Nottingham Waste Local Plan (Adopted Version - January 2002)
  - Ashfield District Local Plan Review (Adopted Version – November 2002)
- 4.72 Finally, the District Local Plan covers all matters involving the development or other use of land, with the exceptions of mineral and waste developments, which by virtue of the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 fall to be considered against the Minerals Local Plan and Waste Local Plan respectively. The main considerations therefore relate to the general policies, and those aimed at safeguarding the environment. These will be an extension of the Structure Plan policies, and largely be similar to the policies contained in the specific subject local plans.

### *Regional Spatial Strategy*

- 4.73 Following the enactment of Section 38 of the PCPA 2004, Regional Planning Guidance (RPG) has become part of the statutory Development Plan and has been re-named as a Regional Spatial Strategy (RSS). The former Regional Planning Guidance (RPG) note 8 has therefore become RSS 8, published in March 2005
- 4.74 RSS 8 aims to provide a broad development strategy for the East Midlands up to 2021 within which local authorities’ planning documents and local transport plans can be prepared. It is divided into three main sections: a core strategy, spatial strategy and topic based priorities. The core strategy, through ten regional core objectives, establishes the context for development plans and local development frameworks. The spatial strategy provides a framework for meeting the region’s development needs. There are four main topic areas in the Topic Based Priorities (Section 4 of the RSS). Of these, Section 4.3 ‘*Natural and Cultural Resources*’ is applicable to the applications These issues

relate to the protection of *inter alia* historic, ecological or landscape interest, together with promoting biodiversity and increasing woodland cover. The section also addresses waste management in paragraphs 4.3.38 to 4.3.45 and includes two policies (Policy 38 and 39). These translate the provisions of the Waste Strategy 2000 to the regional levels, and thus focus on the recovery/recycling targets.

- 4.75 Policy 38 sets out the Regional Waste Strategy, providing for zero growth in waste arisings at 2016; reducing the amount of waste sent to landfill; to exceed Government's targets for recycling and composting and to take a flexible approach to other forms of waste recovery. Policy 39 sets out the regional priorities for waste management, setting minimum targets for the recycling and composting of Municipal Solid Waste of 25% by 2005, 30% by 2010 and 50% by 2015, and providing the waste local plans should include policies to promote sustainable waste management by the development of additional waste management capacity.
- 4.76 The RSS does not introduce any additional policies or issues that are not covered in the Local Development Plan and thus no further consideration is given within this Section.

### *The Joint Structure Plan*

- 4.77 The Joint Structure Plan sets out the strategic land use policies for future development up to 2021, aiming to promote sustainable development. The Plan will help to guide the writing of other planning documents prepared by local authorities and planning documents on specific issues such as waste and minerals.
- 4.78 In view of the broad approach, the document contains many policies. Of these, the most pertinent to the proposed development at Bentinck is considered to be Policy 1/1. This policy addresses "Sustainable Development" making reference to a range of quality employment sites to promote economic growth; integrated transport network; and a range of services and facilities to support business. Of particular note to this application are the aims of protection of distinctive landscapes and the protection and enhancement of the County's biodiversity.
- 4.79 This Joint Structure Plan does not contain any specific policies relating to waste management development. Paragraph 2.67 identifies that waste arisings have increased over the last 10 years and that municipal waste is expected to grow at around 3% per annum. It then goes on to state that it is the role of the Adopted Waste Local Plan to consider waste related development.
- 4.80 In view of this, the phrasing of policies is geared towards built development in the form of new housing, industry, retail, and leisure, with the general strategy to direct development to within existing urban or settlement limits (paragraph 1.13 refers).

- 4.81 Finally, the Joint Structure Plan contains a number of policies aimed at safeguarding the environment. Again, these are addressed at paragraphs 4.101 *et seq.*

### *Waste Local Plan*

- 4.82 The WLP was adopted in January 2002 and is the single most relevant element of the Development Plan to the proposals at Bentinck. The Plan covered the period to December 2004 and although the Plan Period has expired, the adopted WLP remains part of the Development Plan for the purposes of Section 38 of the PCPA 2004, unless material considerations indicate otherwise. The majority of the policies contained in the WLP are capable of being considered material considerations. Whilst all have been taken into account in preparing the revised proposals, only selected key principles and policies are considered here.

- 4.83 Chapter 10 of the WLP addresses the disposal of waste and paragraphs 10.8 to 10.17 identify the shortfalls in disposal capacity. Shortfalls within the Plan period are confined to two areas: the Greater Nottingham Area and the Mansfield/Ashfield area. The Bentinck Site is situated within the latter area, but is also well placed to serve the Greater Nottingham area as well.

- 4.84 In view of the projected shortfall in void capacity the WLP states (at paragraph 10.18) *“there is a need to find suitable disposal sites to meet the shortfall as soon as possible. In order to conform to the Government's "proximity principle" sites must be as near as possible to the sources of waste. In addition, new disposal capacity must be directed towards areas where it has both the least environmental impact and the maximum opportunity to gain environmental improvements, for example by, reclaiming a worked out quarry”*.

- 4.85 Policy W10.4 builds upon this by specifically allocating land at Bentinck to meet the shortfall identified within the Plan. This Policy states

*“Proposals to dispose of construction, demolition, household, commercial and industrial waste within land allocated at the former Bentinck Void will be permitted providing the proposals secure the comprehensive reclamation of the adjacent colliery tipping site and other land within the Void which falls outside the area to be landfilled. Imported materials needed to reclaim the colliery tipping site must be limited to inert waste.”*

- 4.86 The supporting paragraphs in the WLP set out the background to the Bentinck Void and Tip, and considers the issues for each area. Paragraph 10.45 sets out the main planning considerations to be taken into account in considering an application at Bentinck Void:

- (a) A new purpose built access is required which avoids the use of Salmon Lane for HGV traffic and allows direct access onto the main highway network;

- (b) Measures are taken to minimise the visual impact on the nearest isolated properties, and the more distant views from Kirkby Woodhouse;
- (c) Surface water resources are protected;
- (d) The two adjacent SSSIs i.e. Boggs Farm Quarry and Annesley Woodhouse Quarries are protected;
- (e) Protected species and their habitats are conserved or translocated;
- (f) Areas of other significant wildlife habitat are retained where feasible and steps are taken to mitigate those which cannot be retained, for example by translocation;
- (g) Measures are taken to safeguard the viability of the Mushroom Farm;
- (h) The stability of buried or surface slurry lagoons must not be compromised.

4.87 Paragraph 10.47 identifies that a major obstacle in achieving the most basic standard of reclamation for the Tip is the absence of soils. It then goes on to state that between 0.5 and 1 million cubic metres of soils and other suitable reclamation materials would be required to cap the lagoons, provide a reasonable landform with adequate gradients for drainage and to achieve viable plant growth. The subsequent paragraphs set out the constraints to any reclamation scheme, being fundamentally HGV traffic and access, together with the commercial feasibility of the scheme. Paragraph 10.50 concludes that:

*“as a stand alone scheme there appears to be no feasible option for reclaiming the tip due to severe environmental and economic constraints”*

4.88 Paragraph 10.53 refers to a “concept scheme”<sup>13</sup> for the combined Bentinck Void and Bentinck Tip sites which would require approximately 4 million cubic metres of non-inert fill on the Void site and 0.5-1 million cubic metres of inert fill and soils to reclaim the Tip. Paragraph 10.54 recognises that at the planning application stages proposals may vary in detail from the concept scheme.

4.89 The area shown on the “*Bentinck Allocation – Inset 13*” plan extends beyond the application site. It includes land that has been sold by the former Annesley Bentinck Mining Company, such as Kirkby Park Farm. As the applicant does not have any control over these areas, and considering that these areas have been restored and are in agricultural use, it is considered that their exclusion does not materially affect the spirit of Policy W10.4.

4.90 In quantifying the shortfalls the WLP produces a “worst case” and “best case” scenario. The former assumes that a third line at the Eastcroft Incinerator does not become operative and that recycling/composting and other treatment scenarios do not increase significantly. The latter assumes that the third line at Eastcroft does come on stream by around 2000 and that recycling and associated initiatives result in a 10% drop in the quantity of waste being disposed of in the County. On the basis of these assumptions, the “worst case” scenario would require 405,000 tonnes per annum of new non-inert

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<sup>13</sup> “Restoration Assessment for Bentinck Tip and Void” Bowman Planton Associates August 2000

capacity towards the end of the Plan period (December 2004) in the combined Greater Nottingham/Ashfield/Mansfield area, whilst the “best case” scenario would require 295,000 tonnes per annum of new non-inert capacity for household, commercial and industrial waste. In essence, the WLP makes provision for the “worst case” scenario as there was no certainty that the alternatives required by the “best case” scenario would come on stream within the Plan period. The Local Plan Inspector supported this stance. A planning application for the third line at Eastcroft was submitted in June 2005, being outside of the Plan period, and has subsequently been refused by Nottingham City Council. It has also been reported (in the 2004 WLP Monitoring Review (refer to paragraph 4.95 *et seq*) that the amount of waste deposited within the County’s landfill sites has increased.

4.91 In relation to other relevant policies in the WLP, page 13 *et seq* set out the four key objectives of the Plan, namely:

- Protecting the Environment
- Efficient use of resources, including the Hierarchy of Waste Management Options, BPEO, Proximity Principle and Regional Self Sufficiency;
- Controlling Pollution; and,
- Public awareness and involvement.

4.92 These objectives are translated into policy through Policy W2.1, where proposals will only be permitted where they represent the best practicable environmental option, based on a hierarchy where preference is given, in decreasing weight, to reduction, re-use, recovery from composting and recycling, recovering energy from waste and disposal with environmental benefits. Whilst being at the bottom of the waste hierarchy, as set out in paragraph 4.42 above, landfill can still represent the BPEO. Given that the proposals facilitate the reclamation of the entire Bentinck site, then the spirit of the policy is complied with. As set out in paragraph 4.56 above, PPS 10 now divorces BPEO from the planning process: notwithstanding this, Section 5 of this ES considers BPEO and sustainability.

4.93 With regard to composting, Chapter 7 of the WLP is appropriate. The proposals do not involve the initial stage of composting, but maturation of the compost. In particular, Policy 7.2 provides that proposals for composting schemes at Waste Disposal Sites will be permitted provided that they are linked to the life of the site and do not create any unacceptable environmental impact.

4.94 Finally, as with the other Plans, the WLP contains a range of environmental protection and reclamation policies (Chapters 3 and 4 refer). Again these are considered at paragraph 4.101 *et seq*. Notwithstanding this, the application site has been allocated by the County Council within the WLP for landfill, with the suitability of the site tested at a public inquiry. It follows that the development of the site must be broadly in line with these policies, or, where the development is at odds with a policy, the potential impact is not significant.

### *Waste Local Plan Monitoring Report 2000-2003*

4.95 In September 2004 Nottinghamshire County Council published the first monitoring report of the WLP. This report looks at changes in legislation, policy guidance and waste management technologies since the Plan was prepared and examines the performance of individual policies to date. The report covers the 4-year period from January 2000 to December 2003.

4.96 On page 3 the report summarises the situation with regard to shortfalls in waste disposal capacity as

*“... Monitoring of the Plan and recent survey data has shown that these shortfalls are beginning to emerge and that the County faces significant shortfalls in these areas if the Bentinck scheme cannot be implemented. No alternative new sites have come forward and waste is being diverted to other existing, and in some cases, more remote sites. This will reduce their lifespan and increase the need to provide alternative local sites”*

4.97 Paragraphs 5.35 *et seq* of the report (page 27) consider in more detail the review of the Waste Disposal chapter in the WLP. At paragraph 5.38 the report states that the disposal of non-inert wastes within the County has risen dramatically (by more than 50%) which exceeds the WLPs worst case scenario: existing sites are filling quicker than anticipated. At paragraph 5.59, whilst acknowledging that waste in the short term is travelling long distances, it dismisses “*remote disposal*” as an option for the longer term. It goes on to state that “...*the lack of alternative sites underlines the importance for additional local capacity to meet the shortfall needs. If the Plan’s major allocation at Bentinck is not developed, this part of the County faces a severe and increasingly urgent shortage of local non-inert disposal capacity*”.

### *Ashfield Local Plan*

4.98 The Ashfield District Local Plan Review (ALPR) was adopted in November 2002 and covers the period to 2011. Like the Joint Structure Plan, and as set out at paragraph 4.72 above, the District Local Plan does not contain any specific policies relating to waste management.

4.99 Policy ST1 sets out the general strategy of the ALPR against which all applications are assessed, stating that development will be permitted where it does not conflict with other policies; will not adversely affect the character, quality or amenity of the area or the transport network; and it will not conflict with adjoining land use. Policy ST4 makes provision for development outside the urban areas and “*named settlements*”<sup>14</sup> provided that it is allocated for development and is appropriate to the green belt or countryside as set out in policies EV1 and 2 (refer to paragraph 4.104 below).

4.100 Chapter 3 of the ALPR considers the Environment: policies considered to be of relevance to this application are set out in paragraphs 4.101 *et seq* below.

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<sup>14</sup> As defined in Policy ST3 of the ALPR

Notwithstanding this, Policy EV15 states that “Proposals which assist in the reclamation of derelict and contaminated land to appropriate uses will be permitted.”

### Protection of the Environment

4.101 Each of the plans considered above contain specific policies on safeguarding and protecting the environment, covering aspects such as the countryside; the natural environment; built and cultural heritage; and landscape. They also set out policies aimed at minimising the loss of amenity through pollution.

### *Countryside Policies, including Green Belt*

4.102 Policy 1/2 of the Joint Structure Plan (JSP) states that:

*Planning permission will only be granted for appropriate development which is located and designed so as not to adversely affect the Green Belt, in particular its open character. Appropriate development will include:*

- a. uses appropriate to rural areas including agriculture, forestry and mineral extraction;*
- b. essential facilities for outdoor sport and recreation;*
- c. cemeteries;*
- d. limited extension, alteration or replacement of existing dwellings, limited infilling in existing villages, limited infilling or redevelopment of major existing sites as identified in local plans;*
- e. change of use of agricultural and other buildings, with priority being given to employment and tourism uses, which help to diversify the rural economy.*

*Local plans/development plan documents for areas covered by the Green Belt will review its boundaries to meet the development land requirements of the Joint Structure Plan to 2021. In this review of Green Belt boundaries local planning authorities will have regard to:*

- i) sustainable development principles and the sequential approach to development;*
- ii) the principles and purposes of existing Green Belt land, in particular the need to maintain openness and prevent coalescence;*
- iii) the retention of existing, or definition of new, defensible boundaries.*

4.103 Policy W3.17 of the WLP states that:

*“Planning permission will only be granted for waste disposal in the Green Belt where this represents the best option for reclaiming mineral workings or other derelict voids to an after-use appropriate to the Green Belt and where there is no unacceptable impact on the open character of the Green Belt during the life of the operations. Proposals for other associated waste management facilities will only be permitted where they are:*

- (a) Closely linked to a disposal site;*
- (b) Related to the life of the disposal operations and;*
- (c) Promote sustainable waste management practices and;*

- (d) *Have no unacceptable impact on the open character of the Green Belt in terms of location, design and materials.”*

- 4.104 Policy EV1 of the ALPR also seeks to safeguard the green belt. This policy states that permission will not be granted for inappropriate development in the green belt, except in very special circumstances. It goes on to define appropriate development as including “*engineering, mining or other operations and uses which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it.*” This is expanded upon in paragraph 3.15 which notes that mineral working need not be inappropriate development provided that high environmental standards are maintained and that the site is properly restored. Similarly, Policy EV2 states that “*In the countryside permission will only be given for appropriate development. Development must be located and designed so as not to adversely affect the character of the countryside, in particular its openness.*” It goes on to define “*appropriate development*” as including “*waste disposal to reclaim mineral workings.*”
- 4.105 In relation to the green belt, the various policies reflect the guidance in PPG 2, restricting inappropriate development. Waste disposal or ancillary operations are not included within the list of appropriate development set out in PPG 2 (see above). However mineral development is expressly mentioned as not compromising the purposes of greenbelts. It is considered that the proposals for the reclamation of the Tip would be consistent with the purposes of the green belt, as they would remove a current scar in the landscape. Indeed, they are not dissimilar to the restoration of mineral workings. The works would be temporary in nature (like mineral operations) and thus again consistent with the criteria set out in PPG2.
- 4.106 Policies in the WLP and ALPR are not so restrictive, by recognising that landfill in the green belt is acceptable in connection with the reclamation of mineral workings and provided that no adverse impacts upon the open character arise. Section 12 of this ES assesses the landscape and visual implications of the development proposals.
- 4.107 The WLP also recognises that associated facilities can be sited within the green belt subject to strict criteria. The link between the proposed compost maturation facility and reclamation works have been explained earlier, and the facility would only be required for the duration of the reclamation works after which it would be removed and the area restored. Again, Section 12 should be referred to in relation to the landscape and visual impacts.
- 4.108 It should also be borne in mind that planning permission has previously been granted for the tipping of colliery spoil on the Tip and within the Void. The extant scheme would have resulted in a much larger landform, reaching an elevation of around 170m AOD. The concept of tipping has therefore been established. The development proposals would lead to a smaller landform, sympathetically designed to reflect the surrounding topography, whilst achieving the reclamation in the shortest timeframe possible. Without the

import of waste materials, the current impacts of the Tip and Void would remain in perpetuity, permanently blighting the green belt.

### *Landscape*

- 4.109 Policy 2/7 of the JSP addresses landscape character, stating that Local Plans will define the local landscape characteristics, whilst Policy 2/10 seeks to protect the character and qualities of the countryside, stating that limited development, as defined in local plans, which can demonstrate a need for a countryside location may be permitted. As has been set out earlier, the application site is allocated within the WLP.
- 4.110 Policy W3.25 of the WLP and Policy EV4 of the ALPR seek to protect the Mature Landscape Areas.
- 4.111 The 1995 version of the Ashfield Local Plan which was the adopted plan at the time the application was initially submitted identified a substantial tract of land to the south of Salmon Lane, including a short section of the access road, as a Mature Landscape/Wildlife Area. The boundary of the designation has been withdrawn eastwards in the 2002 adopted version of the Plan so that no part of the development footprint now falls within a MLA, although the Cuttail Brook valley south of Salmon Lane and a narrow strip of land between the application site and Kirkby Woodhouse still retain the designation.

### *Natural Environment*

- 4.112 Policies 2/3, 2/4 and 2/5 of the JSP seek to safeguard SSSIs, Local Nature Reserves and Sites of Importance for Nature Conservation (SINCs) and finally sites supporting protected species respectively. Policy 2/6 makes provision for, where appropriate, creating new wildlife habitats, including linking corridors, whilst Policy 2/8 promotes tree planting for nature conservation recreation, amenity and other purposes in the Greenwood Community Forest.
- 4.113 Policies W3.22, W3.23 and W3.24 of the WLP also should be referred to. Firstly, policy W3.22 provides that where a species or habitat of county importance would be harmed or destroyed by a development, planning permission will only be granted where the need for the development outweighs the local conservation interest of the site. Policy W3.23 sets out the criteria for assessing developments which would affect sites of nature conservation or geological interest from international to local importance, generally providing that the need for the development must outweigh the value of the site, with more stringent tests for international designations. Finally, Policy W3.24 addresses protected species.
- 4.114 Policy EV5 of the ALPR relates to the protection of SSSIs stating that proposals in or likely to affect them will be subject to special scrutiny and that development adversely affecting them will not be permitted unless the need for the development outweighs their conservation value.

- 4.115 Policy EV6 relates to local nature reserves, sites of importance for nature conservation or geological significance (SINCS). The policy does not introduce an “in principle” objection to developments affecting SINCS. It requires the development to protect the features, or where the development cannot be located elsewhere, which is clearly the case for the application site, provision then needs to be made where feasible for the creation of similar habitats.
- 4.116 Section 13 of the ES assesses the potential impacts upon the natural environment and sets out in detail how mitigation would be achieved.

### *Built Environment and Cultural Heritage*

- 4.117 Policies 2/11 and 2/12 of the JSP, coupled with W3.27 and W3.28 address features of Cultural Heritage interest. The former (2/11 and W3.27) seeks to safeguard archaeological features from national to local interest, whether scheduled or not. The latter consider conservation areas, listed buildings and Historic parks and Gardens.
- 4.118 Policies EV 10 to 14 address features of Cultural Heritage interest, namely Conservation Areas (EV10); Ancient Monuments (EV11); Listed Buildings (EV12); the setting of Listed Buildings (EV13); and Historic Parks and Gardens (EV14).
- 4.119 Section 14 should be referred to for a detailed consideration of the archaeological resource within the application site and its environs, together with the built environment.

### *Transportation*

- 4.120 Policies in Section 5 of the JSP relate to sustainable transport methods, promoting increase use of rail and public transport, and safeguarding land for the development of such transport modes, and are thus not relevant to the proposals. Policy 5/8 discourages direct access onto the strategic road network. The access proposals take account of this. Policy 5/9 relates to safeguarding land for motorway and trunk road improvements. Of these, improvements to Junctions 21 to 30 of the M1 would not affect or be affected by the development.
- 4.121 Policy W3.14 of the WLP states that planning permission will not be granted where the vehicle movements generated cannot be accommodated by the highway network.
- 4.122 Transportation issues are considered in detail within Section 11 of this ES

### *Pollution*

- 4.123 Policy 2/17 of the JSP simply seeks to minimise pollution (to land, water, noise and light) by means of good design and the control of operations. For the development proposals, many of the “controls” would be stipulated in the PPC permit, or controlled via planning conditions attached to any planning permission.
- 4.124 Sections 8 (Air Quality) and 10 (Noise) of this ES should be referred to for further consideration of the potential impacts.

### *Protection of Ground and Surface Water*

- 4.125 Policy EV16 of the ALPR specifically seeks to protect groundwater. Similarly, Policy W3.5 of the WLP protects ground and surface water from pollution stating that permission will not be granted unless the impacts can be mitigated. In addition, Policy W3.21 seeks to protect watercourses, wetlands and lakes.
- 4.126 Section 7 should be referred to for further consideration of the potential impacts upon the water environment.