



17 January 2023

Agenda Item 5

REPORT OF INTERIM CORPORATE DIRECTOR – PLACE

ASHFIELD DISTRICT REF. NO.: 4/V/2022/0678

PROPOSAL: EXTENSION TO THE DURATION OF IMPORTATION AND GRADING/RECLAMATION WORKS TO 7 MARCH 2024 TO ALLOW FOR THE SCHEME TO BE COMPLETED IN LINE WITH THE APPROVED PLANS (VARIATION OF CONDITION 3 OF PERMISSION 4/V/2012/0096)

LOCATION: BENTINCK COLLIERY TIP, PARK LANE, KIRKBY IN ASHFIELD, NOTTINGHAM

APPLICANT: BROOMCO (1997) LIMITED- MR CARL WRIGHT

Purpose of Report

1. To consider a section 73 planning application seeking variations to conditions to allow further time in which to complete importation of restoration materials and land grading at the former Bentinck colliery tip until March 2024. The key issue relates to the sensitive ecology. The recommendation is to grant section 73 planning permission subject to the updated conditions set out in Appendix 1.

The Site and Surroundings

2. The former Bentinck colliery spoil tip, covering some 83 hectares of elevated and partly restored ground, is situated between the settlements of Selston, Annesley Woodhouse and Kirkby Woodhouse, on the eastern side of the M1. The centre of Kirkby-in-Ashfield is approximately 2.5 kilometres north-east of the site (see Plan 1). The site lies entirely within the Green Belt.
3. Access is gained via Park Lane (B6018) running along the site's northern boundary. There are two residential properties just west of the site entrance (High Cliff and The Hollies). A railway line skirts the north-eastern corner of the site before crossing Park Lane via a level crossing.
4. The fringes of Kirkby Woodhouse lie approximately 250m to the east of the site boundary, with residential properties along Arthur Green Avenue, Beauvale Road and parts of Main Road having views across the tip site. Although there are properties in Selston which are closer, they are screened by a woodland belt

alongside the M1. Kirkby Park Farm is immediately adjacent to the western boundary of the site, on the eastern side of the motorway.

5. The tip was formed using colliery waste from the Annesley-Bentick mine which was placed to form a steep-sided landform with a plateau holding a number of tailing lagoons. The top of the tip is at an elevation of between approximately 145 metres AOD and 155 metres Above Ordnance Datum (AOD), compared with Park Lane at approximately 120 metres AOD. Most of the original top soils have been historically lost from the Tip site (and were taken to the adjacent Bentinck 'Void' site) leaving large tracts of bare colliery spoil.
6. The tip site can be broadly split into two halves to the west and east of a haul route. The tip site is now partly restored to rough/conservation grassland with works to date undertaken to the western side in phases 1, 2 and 3 (Plan 3 shows the phasing). This has involved importation and grading of inert waste, mostly soil and earth materials, to create a gentle rolling topography in phase 1 to the north west, along with reducing the area and depth of the lagoons (including 'capping' works to make them safe). To the south of this area materials have been spread to achieve a flatter profile in line with the restoration scheme. Regrading works have been ongoing to cap and alter the shape of the second large lagoon. The system of on-site lagoons are linked together by drainage ditches and pipes. The very western parts have been completed with soils and seeded to conservation grass. Some final soiling, seeding and planting is required to finish off these first three phases.
7. The remainder of the site to the east in phases 4, 5 and 6 has yet to be fully restored. Much of this area (particularly phase 6) remains undulating bare spoil which is sparsely vegetated by colonising grass, self-set birch trees and ephemeral reed beds around the edges of two waterbodies, one of which extends to approximately one hectare towards the centre of the tip area. A number of temporary stockpiles are also present. Areas to the north east (phase 4) have however been previously restored to grassland and pasture. This area is at a higher elevation than the central parts, creating a steep sided bowl.
8. To the immediate south of the site, at a much lower level, is the Bentinck void which is a landform resulting from historic opencast coal extraction and which is now designated a Site of Special Scientific Interest (Annesley Woodhouse Quarries SSSI) denoted for its calcareous and marshy grassland supporting an outstanding assemblage of native amphibians, including a nationally important breeding population of great crested newts. A lake fills the base of the void and is fed by the Cuttail Brook which then enters a culvert which continues for over a kilometre beneath the tip site and beyond it to a discharge into the River Erewash to the north.
9. A second SSSI- Bogs Farm Quarry is close to the south western corner of the tip site. This covers an area of 5.05 hectares and is designated due to its unimproved acid-loam grassland, marsh, flushes, open water pools and a wooded dumble.

10. The majority of the application site itself has a Local Wildlife Site designation with 'a mosaic of habitats of botanical and zoological note on the site of a former mine'. Originally this just covered the Void site to the south but was later extended in 2007 to cover the tip site on account of its avian interest. The ecological designations are shown on plan 2.
11. There are no public rights of way through the operational areas however Kirkby Footpath 20 passes around the north and western edges of the site from Park Lane, to Selston via a motorway underpass.
12. Part of the western side of the site is subject to statutory safeguarding for HS2 Phase 2b, roughly parallel with the motorway. However this section of the high speed line is no longer part of the Government's plans.

Background/ planning history

13. There is an extremely long and complex planning and ownership history to the site which for the purposes of considering the present proposal it is not necessary to set out in detail.
14. In brief terms the establishment of the tip predated the modern planning Acts, but thereafter a number of planning permissions were granted for extended tipping and also some open cast coal mining during the 1950s to the 1980s. This included what is now called the Bentinck Void.
15. After the closure of Bentinck Colliery, disposal of colliery spoil finally ceased in 2000 and it was around this time that the site was allocated as an inert waste disposal site in the Waste Local Plan, alongside plans to dispose of household, commercial and industrial wastes within the Void site.
16. Changes in land ownership for both the tip site and the void were accompanied by unsuccessful planning applications for waste disposal and restoration of both the main tip and the Void site (proposals for tipping within the void were withdrawn), although some remedial works, involving imported inert materials were authorised in 2009 and 2011 and were completed. In addition to the different ownerships of the tip and void sites, the majority of the original soils became effectively stranded within the Void site when it was designated as an expanded SSSI in 2011.
17. In 2012 detailed proposals were submitted by the current owners to restore the former tip site through importation of (other) materials to create a range of outdoor recreational and sport uses. This was supported by a comprehensive Environmental Impact Assessment. It was resolved to grant on 20th November 2012 and planning permission was subsequently issued on 11th March 2013 following completion of a Section 106 legal agreement. Planning permission 4/V/2012/0096 thus granted:

The restoration of the former Bentinck Tip site using site derived and imported restoration materials to create a range of outdoor recreational facilities including an equestrian centre, football pitches, golf course, driving

range, camping grounds, fishing pond, and adventure play area, including landscaping, planting, ecological enhancements and the installation and operation of two wind turbines to provide the facilities with renewable energy.

18. The permission is subject to some 67 planning conditions as well as the section 106 agreement (governing HGV routes, highway dilapidation surveys and additional site aftercare, and improvements at Kirkby Cross mini-roundabout). It is particularly relevant that the completion of the importation and land grading aspects of the development were time limited and required to be complete within 5 years of commencement (condition 3):

The importation of inert material onto the site and its grading to the final approved levels shall be completed with five years of the date of commencement, as notified under Condition 2 above.

Reason: To ensure the restoration of the site is completed within a satisfactory timescale.

19. The WPA's records show that works commenced prematurely in November 2013 prior to the discharge of all pre-commencement conditions, however formal commencement of the permission is later recorded as 7 March 2014 meaning all importation and land grading should have been completed by 7 March 2019 by virtue of condition 3.
20. A Deed of Variation was agreed to the s106 agreement in 2017 which deleted an obligation to upgrade the nearby Kirkby Cross mini roundabout. A non-material amendment was also previously approved to the site access visibility splays.
21. Through the WPA's longstanding and regular monitoring programme it became clear in recent years that progress in the works was behind schedule and the developer was advised it needed to apply to seek further time in which to complete the initial restoration works. Initial Screening and Scoping Opinions were obtained from the WPA in October 2019 and January 2021 through which the Authority deemed the further time required to be EIA development (in line with the original application), but that the main concern would be related to sensitive ecology rather than necessitating a full reassessment. The WPA's Scoping Opinion highlighted the need for new ecological surveys which were undertaken throughout 2021, leading to the present application being received in July 2022 (valid with further information in August).
22. Importation of inert wastes and land restoration works have continued in breach of condition 3 (including 28+ months before the application was submitted) and at increasing risk of formal enforcement action being taken. Initial enforcement action was taken in the form of the issuing of a Planning Contravention Notice (PCN) in July 2022 which returned information on the quantities of materials brought in to date and estimates going forwards. The WPA has however received only limited local complaints regarding the operations (see Traffic and Access below) and considers that, other than the substantial breach to condition 3, works have in the main proceeded in accordance with the planning

permission and the associated plans. Such matters are relevant to the expediency of whether to take more formal enforcement action. As of yet, none of the envisaged after uses have been completed or opened to the public and large areas across the eastern side of the site remains unrestored. The WPA is separately aware that the Environment Agency have concerns that the quantities of materials being brought in, or remaining to be brought in, may exceed the terms of the site's Environmental Permit. This is considered further in the report.

Proposed Development

23. As the developer has not completed the reclamation works within the timeframe set by condition 3, the planning application (under section 73) seeks to extend the date by which the importation and grading of waste is required to cease by a further five years until 7 March 2024 - therefore taking account of the ongoing breach period.
24. No other changes are sought and the applicant states it is not proposed to fundamentally alter the scheme or intensify operations over that already approved. The stated intention is to continue with the development of a range of sporting and recreational after-uses in line with the approved details following the completion of the reclamation works (although it must be recognised that the grant of permission permits these and does necessarily not compel their full development).
25. The applicant explains that the main reason for the delay in completing the reclamation works is related to engineering difficulties associated with the infilling/reshaping of lagoons and their capping to avoid uncontrolled discharge of water and ensure a stable surface is provided. Additional materials had to be obtained to stabilise colliery lagoon slurry.
26. Reclamation works have proceeded on a phased basis (see plan 3) and the following is the applicant's summary of the position at each phase.

Phase 1 is substantially complete save for final regrading works and spreading of soils/soil forming materials;

Phase 2 is substantially complete save for some final regrading works and removal of stockpiles of restoration materials. Further works are required along the southern boundary adjacent the SSSI pending determination of requirement in respect of Great Crested Newts (GCN);

Phase 3 is substantially complete save for minor regrading works around the edge of the lagoon and the south-east boundary adjacent the SSSI pending determination of requirement in respect of GCN;

Phase 4 has not commenced. Given this area is already grassed and needs localised regrading works to accommodate golf fairways it is suggested that work within this phase would be undertaken last;

Phase 5 has not commenced and as for Phase 4, minimal works are required for this phase with limited infilling at the western end. As such, it is proposed to carry out these works after Phase 6 ; and

Phase 6 has not commenced.

Generally the only landscaping completed to date is grass seeding and a small area of tree planting on the northern perimeter required by condition 22.

27. Volumetric analysis of the landform undertaken by the applicant has shown that sufficient material has been imported to the western half of the site to achieve the final levels as detailed in the approved plans. Some regrading is required, and soils may need to be imported for the final restoration layer.
28. Within the eastern half of the application site no infilling has been undertaken to date. Some areas of spoil need regrading to achieve the final levels (as they are currently above the restoration profile), however there is a calculated net deficit of around 148,000m³ of fill and soils that needs to be brought into the site, which equates to an average depth of just under 0.5m across the area. The applicant has confirmed that the volume figure is a best estimate and that it includes soils in order to establish vegetation.
29. In order to expedite the reclamation of the tip the applicant considers it would be favourable in visual terms to move onto restoring phase 6 following completion of phases 1 to 3, as phases 4 and 5 do not require the importation of significant quantities of waste materials and are in effect a cut/fill exercise to create the desired final landform. The majority of these phases (unlike phase 6) were historically restored to some degree with phase 4 seeded to grass and one area of phase 5 contains planted trees.
30. The applicant has also taken onboard advice from the WPA that the planning permission would benefit from there being an interim restoration design/standard in place prior to the full delivery of the sport after uses, particularly the 18-hole golf course which has the greatest use of the site. They propose to submit such a scheme within 3 months of a grant of further planning permission and this interim restoration would continue with creating the approved landform, but would not create any of the golf course features such as tees, fairways, bunkers and greens. This is effectively what is being done at phases 1-3 presently. At this stage all areas of the site are being seeded with conservation grass seed mixes to stabilise the surface soil structure and help integrate the site into the wider landscape.
31. Once the landform has been achieved to the authorised contours, the original permission provides for (see plan 4):
 - (i) An 18 hole golf course, driving range, clubhouse, car park and greenkeepers' building;
 - (ii) Three football pitches with changing facilities;

- (iii) An equestrian centre including stables, ménage, paddocks, and horse riding trails;
 - (iv) Caravan and camping area, including toilet/shower facilities and a dwelling for a site manager;
 - (v) Adventure playground and picnic area;
 - (vi) Fishing pond;
 - (vii) Outdoor classroom;
 - (viii) Bird hide;
 - (ix) A building containing six office units;
 - (x) Two wind turbines;
 - (xi) A statue indicating the site's previous mining heritage;
 - (xii) Areas of nature conservation interest.
32. The applicant would like the site to be known as 'The Portland' reflecting the local mining heritage of the area. It is anticipated that the facilities would be used by the local community whilst also drawing visitors to the area. For full details please refer to the planning permission: <https://www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=ES/2539>

Consultations

33. **Ashfield District Council** – *No objection.*
34. *It does not appear that the extension of time would lead to any harm and would ensure that the tip site would be developed as envisaged within the 2012 application, therefore there are no objections.*
35. **Natural England** – *No objection.*
36. *Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.*
37. **Environment Agency** – *No objection.*
38. *This is an extension of time application and the scope of the proposed works has not been altered. Risks to controlled waters were adequately assessed at the main application stage and it is agreed that this assessment does not require updating for this proposed time extension.*

39. *Provided the developer remains compliant with their Environment Permit there are no objections to this time extension from a controlled waters protection point of view.*
40. *The site in question currently holds an environmental permit which states a maximum of 940,500 tonnes of waste can be imported to complete the desired restoration scheme. Any change in planning which relates to the requirement to import more waste than outlined in the permit, will require a permit variation to allow for the extra waste needed to meet their planning permission. This permit variation must be applied for and granted before any waste above the 940,500 tonnes limit is accepted on site.*
41. **NCC (Nature Conservation)-** *No objection subject to conditions requiring an updated Ecological Mitigation and Management Plan.*
42. *The Environmental Statement notes that the proposed extension of time will give rise to a longer period of ecological disturbance and habitat change. Its conclusion is that with proposed mitigation in place, no residual effects are identified and no additional compensatory or avoidance measures are required.*
43. *However, the proposed mitigation requires an update to the Ecological Mitigation and Management Plan (EMMP, which is now 10 years old). As such, a revised version of the EMMP should be produced, and its submission within two months should be made a condition of any permission granted.*
44. *In addition, the above condition should also require a quarterly report is produced by an Ecological Clerk of Works (ECoW) summarising how the EMMP has been enacted and identifying any changes that are needed, given the complex nature of the mitigation required and the potentially rapid rate of change that will occur at the site as a result of the work.*

With respect to NWT's comments:

45. *Agrees that more certainty is required regarding what are shown as 'possible' additional scrapes and ponds on plan BG 6/1A. This must be addressed in the revised EMMP.*
46. *NWT suggest that the updated EMMP should be provided prior to determination of this application. Given that works at the site are ongoing, the stage at which the EMMP is submitted would appear to be a moot point for the planning officer to consider.*
47. *Regarding birds, again it is recommended that changes are made to the EMMP as above.*
48. *Application of the BNG metric is proposed by NWT. Given that this application is for an extension of time, and the restoration itself hasn't changed this would be of no benefit.*

49. **Nottinghamshire Wildlife Trust-** *Objection raised unless the scheme can be revised to show significant betterment for wildlife, particularly for the rare and sensitive species present.*
50. *The updated surveys are welcomed, given the known ecological importance of this site as a LWS, and also adjacent to a SSSI, with multiple protected species present. The surveys are satisfactory but there is disagreement with the assessment conclusions.*
51. *Concern is raised that the delay in completing restoration work has enabled sensitive and protected species to continue to be present, including Great Crested Newts (A European Protected Species) and also breeding little ringer plover (Schedule 1 bird species).*
52. Amphibians- *The surveys have demonstrated the continued high ecological value of this site, including a very important population of Great Crested Newts (clearly part of the greater population for the adjacent SSSI).*
53. *The assessment confirms NWT's view that the extended period of delayed restoration and disturbance would have an impact on GCN over an increased period of time.*
54. *Whilst any destruction of ponds inhabited by GCN would have to be undertaken under a Natural England licence, it is still disappointing that the area of wetlands will reduce overall.*
55. *Plan BG 6/1A dated 2012, submitted again with this extension application, still shows a series of "possible" extra ponds, without confirming these will be created. Further small wetlands or ponds should be established to overcome the reduction in habitat for this rare species and details should be submitted for approval.*
56. *It is essential that the 2012 EMMP is updated, but the scheme as proposed does not provide adequate mitigation. The EMMP should form part of the planning determination.*
57. Birds - *The site is designated as an LWS for its overwintering and breeding birds. Red-listed species including lapwing, linnets and little ringed plover were recorded breeding on site. The ecological assessment recognises that in addition to habitat loss, the proposal to extend the duration of the reclamation works has the capacity to result in negative impacts upon birds through an extended period of disturbance from noise and visual effects.*
58. *The assessment states whilst outside of the scope of this assessment, the consented scheme to develop a golf course and other amenity uses is predicted to result in a long-term loss of habitats for birds, principally through the loss and alterations to waterbodies. It is predicted that there will be permanent losses of breeding sites, especially for waders such as little ringed plover and oystercatcher, and wintering/passage sites for waders, including golden plover. Also the restored operational site is predicted to lead to human disturbance with*

the potential to reduce the site's capacity as a breeding, wintering and passage site.

59. *NWT agree with the assessment and also that the scheme as currently proposed, and viewed against up to date policies and legislation, is not adequate to mitigate or compensate for these losses. Further compensation is required, i.e. additional and higher quality habitats for birds, through revisions to the restoration scheme, which should be required prior to determination.*
60. *Other- Impacts to water voles and invertebrates can be addressed in an updated EMMP. Modern low impact lighting should be used to prevent impacts on foraging bats. The application should contain a Biodiversity Net Gain assessment.*
61. **NCC (Highways)** *-No objection to the extension of duration of works subject to planning conditions and s106 obligations continuing.*
62. **NCC (Archaeology)** *– Raises no specific comment.*
63. **NCC (Flood Risk)** *– No objections or further comment.*
64. **NCC (Planning Policy)** *– No objection or further comment.*
65. **High Speed Two (HS2) Limited-** *Confirms that they have no specific comment and therefore the application can be determined without further referral to HS2 Ltd.*
66. **Via (Countryside Access)** *- No objections.*
67. *The proposed extension of works time does not affect Kirkby in Ashfield Footpath 20 which runs to the western boundary of the application site and is currently open and available on the ground.*
68. **Via (Landscape)** *– No objection subject to landscape conditions from application ref: 4/V/2012/0096 being carried forward.*
69. *This will achieve a long term improvement in the landscape and visual character of the site by revegetating the former colliery tip and retaining the existing mature woodland and vegetation.*
70. *Visual Impact - The impacts identified in the original Landscape and Visual Impact Assessment will continue until the completion of the restoration in 2024 (these include moderate to substantial impacts at 4 viewpoints and a substantial impact at 1 viewpoint). The continuation of these impacts must be weighed against the long term benefit of the completion of the restoration of the site and the envisaged community recreational facilities.*
71. *Restoration proposals- restoration plans may need to be amended as a result of the additional suite of ecological surveys.*
72. *The restoration strategy report mentions the use of Ash for the proposed woodland areas however Ash should be avoided due to the continued Ash*

Dieback disease. Other tree species should be increased to compensate for the removal of Ash.

73. **Via (Noise Engineer)** - *No objection to the proposed extension of time subject to noise conditions from application ref: 4/V/2012/0096 being carried forward.*
74. **Via (Reclamation)** -*No objection subject to adherence to conditions and one additional condition to verify the site is free of contamination.*
75. *Satisfied that the variation is unlikely to result in a significant change in relation to contamination risk, compared with the permitted development. This is subject to confirmation that the additional materials imported to complete the reclamation works do not present a risk of contamination to any receptors (as per Condition 11).*
76. *Recommends that the applicant is reminded of the requirements of Condition 12 (intrusive ground investigations) for the remaining phases of the development.*
77. *Recommended that, on completion of the restoration and prior to bringing any areas of the site into recreational or other new land uses, a verification report is submitted for approval including evidence e.g., ground investigation results and risk assessments, to show that the site is uncontaminated and suitable for the proposed post-restoration land uses.*
78. **Planning Casework Unit** – *Does not wish to comment.*
79. No responses have been received from **Annesley & Felley Parish Council, Selston Parish Council, NCC Built Heritage, Ramblers (Nottinghamshire Ramblers)** or **Network Rail**.

Publicity

80. The application has been publicised by means of site notices, a press notice and with 66 neighbour notification letters sent to the nearest occupiers in accordance with the County Council's adopted Statement of Community Involvement. No representations have been received.
81. Councillors Daniel Williamson and David Martin have been notified of the application.

Observations

Introduction

82. This application is submitted under Section 73 of the Town and Country Planning Act 1990 (commonly known as a variation of conditions) in order to allow further time for the completion of the reclamation and land grading works, involving imported materials. After this is completed the original planning permission (still) allows for a wide range of sport and recreational after-uses to

be developed. There is however no time limit to their implementation and the only time limiting factor relates to the initial works in order to promote the timely reclamation of a despoiled former colliery tip-one of the largest left in the County.

83. Under the s73 procedure the decision maker is required to focus on the changes to the condition(s) being sought. Usually this does not entail reconsidering afresh the overall principal acceptability of the development for which the original planning permission has established. Nor is it usually an opportunity to re-write or fundamentally alter an existing permission/development. It is however nonetheless a planning application and in focussing on the variations or changes being sought there is a determination to be made against the Development Plan and material considerations as they stand today, with factors which may have changed or moved on since the original planning permission was granted.
84. If a s73 application is granted, a new planning permission is issued containing the conditions varied as sought, along with any persisting conditions that remain necessary to define the details of the development, and the regulation of undertaking that development. It is possible to carry out a limited review of the conditions so long as this does not fundamentally alter the permission. If, on the other hand, s73 permission is refused, the existing planning permission remains intact including all original conditions and requirements.

Acceptability of further time for reclamation works

85. There is one principal issue to consider in this case and that is the effect of the proposed delay/further time in completing the initial site reclamation works and the creation of the overall site landform as detailed in the original planning permission. Relevant here are potential impacts to the local environment including ecology and local landscape. Indirectly there are other matters around sustainability to consider including an apparent need to import additional waste and restoration materials.
86. Since the permission was granted in 2013 there has been steady progress to reclaim the western parts of the site in phases 1, 2 and 3 into the final landform, minus the detailed aspects of the envisaged after uses such as golf course bunkers. At present much of these parts of the site are being finished off with seeding to create a biodiverse grass sward until such time that the after uses are developed further. This is in effect an interim position allowing for what was a bare colliery spoil tip to be re-sculpted and 'greened' into a visually more sympathetic landform, and to improve the overall condition of the Green Belt and local landscape character.
87. Progress noted, there is however much more work to undertake on the eastern side in phases 4, 5 and 6, particularly phase 6. Delays in completing the works in phases 1, 2 and 3 have been noted above as well as the reasons given by the applicant, which relate to difficulties in capping/re-sculpting works to the waterbodies. There is no reason to believe the delay is due to any shortage of obtaining suitable materials as very significant quantities have been brought in.

88. To support the proposal for more time the applicant has engaged a surveyor to analyse the site topography and which has been compared with the approved contours and landform within the existing permission. The details of this show that the existing works undertaken in phases 1, 2 and 3 are in conformity with the approved contour plan. They then show the volumetric cut and fill work which still needs to be completed in phases 4, 5 and 6. From this the applicant estimates that a further 148,000m³ of material needs to be sourced.
89. The applicant has previously declared to the WPA that 832,795m³ of material has been imported since the original planning permission was granted and up to February 2022. With the additional materials now apparently required, the total volumes of waste to be imported appear to be substantially higher than estimated/proposed in 2013 (495,000m³). Whilst this is of some concern, the applicant's surveyor sets out in some detail a reasonable explanation that surveying techniques have advanced in accuracy such that the original baseline topography was incorrect. Furthermore they state that additional materials had to be obtained for the lagoon capping works as difficulties were encountered with colliery lagoon slurry which required a substantial volume of material to encapsulate it and produce a safe and stable landform.
90. It must be stressed that no changes are being proposed to the previously approved final landform and contours that need to be achieved. This was previously considered acceptable in the original planning permission, including in landscape and visual terms, and in order to provide a basis for the delivery of the beneficial after uses, particularly the golf course. Therefore whilst it is the case that additional materials are expected to be sourced, these would be beneficially used to finish off the reclamation of the tip site – mostly in phase 6 in order to provide a substrate for grassland vegetation and also to address the stability and safety of the lagoons. Because there are also some areas of cut and fill to undertake, the last three phases overall require much less material than the works undertaken in phases 1, 2 and 3.
91. The benefits of continuing with the reclamation works and then the provision of a range of sports and recreational after uses remain compelling. Since 2013 the planning policy context has changed, but not to the extent to call into question the appropriateness of the project. For the avoidance of doubt the after uses fall outside of the present planning policy considerations. The focus must be on completing the importation and reclamation works and ensuring this is environmentally acceptable.
92. The Waste Core Strategy (WCS), adopted in December of 2013 partly replaced the Waste Local Plan (WLP), including its allocations. A new Minerals Local Plan has been adopted, however the policies of the Minerals Local Plan are not considered to be relevant to this waste development. The WCS has a greater emphasis on achieving high levels of recycling of all forms of waste, followed by recovery and lastly disposal – the waste hierarchical order. This is set out in Policy WCS3. For disposal, the policy states that new or extended disposal capacity will be permitted only where it can be shown that this is necessary to manage residual waste that cannot economically be recycled or recovered.

93. There is already a very high level of recycling and recovery of construction/ inert wastes and soils which generally can take place on construction and development sites. However, as surplus materials do arise they can be beneficially reused, ideally locally, following the proximity principle. Locationally the site sits favourably within the Mansfield/Ashfield shortfall area, but also within a Green Belt location. Its acceptability for receiving inert waste has previously been established.
94. Policy WCS5 - (Disposal sites for hazardous, non-hazardous and inert waste) is particularly relevant and is set out below.

Policy WCS5 (Disposal sites for hazardous, non-hazardous and inert waste)

Where it is shown that additional non-hazardous or inert landfill capacity is necessary, priority will be given to sites within the main shortfall areas around Nottingham, and Mansfield/Ashfield. Development outside this area will be supported where it can be shown that there is no reasonable, closer, alternative.

Proposals for hazardous waste will need to demonstrate that the geological circumstances are suitable and that there are no more suitable alternative locations in, or beyond, the Plan area.

In addition to the above, preference will be given to the development of disposal sites for hazardous, non-hazardous and inert waste in the following order:

a) the extension of existing sites

b) the restoration and/or re-working of old colliery tips and the reclamation of mineral workings, other man-made voids and derelict land where this would have associated environmental benefits;

c) disposal on greenfield sites will be considered only where there are no other more sustainable alternatives.

Where disposal sites proposed in the Green Belt constitute inappropriate development, very special circumstances would need to be demonstrated in line with national guidance.

95. The former colliery tip benefits from a planning permission to create/restore a specified landform using inert materials, as such the continued importation of waste can be justified as necessary in this case and to enable the authorised after-uses to then come forwards.
96. The site also sits within the shortfall area and crucially, disposal of inert wastes is supported in planning policy terms in order to restore and reclaim former colliery tips (where this would have associated environmental benefits).

97. Whilst the site is within the Green Belt, in applying national planning policy (Chapter 13 NPPF), the actual tipping and grading works could be deemed as part and parcel of the material change of use of the land to a range of appropriate sport and recreational uses which in principle can be appropriate provided the openness of the Green Belt is preserved (as a foil to urbanisation) and that the works do not conflict with the defined purposes of including land within it. The continued reclamation works would satisfy these provisos and are appropriate. There would also be no conflict with the saved policies of the Ashfield Local Plan (policies ST1, EV1 and EV2) with regards to the Green Belt and open countryside.
98. It is recognised that the wider development involves multiple components, including new sport and recreational land uses and ancillary built development such as a club house for the golf course as well as two small sized wind turbines (the approved turbine model is 34m high from ground to blade tip and it is not clear if these are manufactured any more). It is not within scope to reconsider these aspects afresh as they benefit from the existing planning permission. Their impact on the Green Belt was previously assessed and considered appropriate. Their delivery however, along with the associated social and economic benefits that they would bring to the area would be further delayed. If and when the western side is completed it may be possible to commence some of the after uses such as the football pitches, but aspects such as the 18 hole golf course rely on the completion of the restoration landform across the eastern side of the site.
99. It is therefore assessed that the continued importation and land reclamation works for a limited further period of time would be compliant with Policy WCS5 as there would be resulting broad environmental, social and economic benefits in terms of the actual restoration works and the enabling of the afteruses thereafter. More broadly there is no conflict with the Waste Core Strategy, nor the Ashfield Local Plan subject to assessment of the relevant environmental impacts.
100. The extension of time is not considered excessive, particularly in terms of the time actually remaining. Policies W4.1 and W4.2 of the WLP set out the general principles that waste disposal and reclamation operations should usually be carried out on a phased basis and that there is evidence and likelihood of sufficient waste materials being available to achieve a site restoration within an acceptable timeframe. The completion of the reclamation works in time for March 2024 will be challenging but can be achievable based upon the rate of waste importation to date (circa 105,000m³ per annum on average). Variabilities and risks include weather conditions and the availability of suitable, clean materials from donor construction sites. Licenses in relation to Great Crested Newts are likely to be required. A further issue is that the Environment Agency have identified that the operator may need to apply for a variation to the site's associated Environmental Permit as it contains limits on the quantities of waste permitted to be imported (and which may now be exceeded). This has been brought to the applicant's attention (and a note can be added to the permission, if granted). However, assuming these other regulatory requirements are satisfied, the applicant's other business operations have proven the ability to

import very significant quantities of materials for phases 1, 2 and 3 and there does not appear to be doubt that this can and would continue until the site has been fully reclaimed. Therefore Officers are content with the extension of time, subject to further consideration of phasing as discussed below, and progress will require continued and closer monitoring. In this respect an additional planning condition (No.2) is now recommended to require submission of an annual topographical survey to allow the WPA to ensure the works progress in line with the approved reclamation contours.

101. With regards to site phasing, given the time remaining, it is considered necessary to make a change to condition 23 to prioritise reclamation works in phase 6 before 4 and 5 (in agreement with the applicant). The latter already benefit from some previous restoration works and have a cover of vegetation, whereas phase 6 is completely unrestored. The modification to this condition is necessary to render the proposed time extension acceptable. If, however, the reclamation works have not been fully completed by March 2024, the applicant, along with the WPA will need to review the situation and consider any changes (such as scaling back works in some areas) or further time that may be desirable in planning terms to create a suitable and sustainable development.

Ecological Impact

102. The site and surrounding context is considered ecologically sensitive and is predominantly why a focussed update to the Environmental Impact Assessment has been needed, including a suite of updated ecological surveys. The site itself remains classified as a Local Wildlife Site, and it adjoins the SSSI to the south, known as the void site, but officially designated as the Annesley Woodhouse Quarries SSSI. Bogs Farm Quarry SSSI is also close to the south west. There is connectivity between these sites in terms of the ground conditions and also through a network of ditches and ponds. On site habitats include habitats of principal importance such as open mosaic habitat and reedbeds which support invertebrates, foraging and commuting bats, great crested newts, reptiles, water voles, and birds.
103. The overall intention is to continue with a phased site reclamation working around habitats and creating new ones. Temporary changes to the waterbodies and drains are necessary and in doing so there are measures to prevent pollution reaching the SSSI. There are measures to mitigate impacts to protected and other notable species. Licenses may also be required from Natural England in some cases.
104. The Environmental Statement identifies there is potential for short-term reductions in onsite habitat suitability for protected species, potential impacts of insensitive lighting, and the potential to disturb, injure or kill protected or notable species (i.e. species of conservation importance) during continued site reclamation works. It states that suitable mitigation has been designed that minimises these impacts to a negligible level. This included the provision of suitable habitats post restoration and working practices regarding vegetation clearance to reduce the likelihood of disturbance or injury. A European Protected Species licence would be required from Natural England prior to

works commencing within waterbodies that support great crested newts. This would include suitable practices to ensure the long-term viability of the population. Subject to the mitigation, no residual effects are identified and no additional compensatory or avoidance measures are required.

105. The application does not propose making changes to the final layout of envisaged sport and recreation after uses and there is only limited opportunity to influence the designs given the narrow nature of this section 73 application. It is not open to the WPA to attempt to require a redrawing of these aspects which benefit from full planning permission. The focus must instead be on ensuring the mitigation measures are adequate going forwards. Here it is noted that the County Council's natural environment manager has raised no objection to the proposed extension of time subject to a refreshed Ecological Mitigation and Management Plan (EMMP) to be bolstered further by a requirement for the applicant to appoint an Ecological Clerk of Works to oversee the measures. The updated EMMP can be required by planning condition, and in the interim the existing version will apply. It is also the case that Natural England, as the statutory consultee in relation to SSSIs has not objected and is satisfied that the continued works would not result in likely significant effects on such statutorily protected sites. This finding is afforded strong weight.
106. A number of points have been raised by the Nottinghamshire Wildlife Trust as summarised in the planning consultations section of this report. Some of the issues are considered legacy matters which related to the consideration of the original, approved plans. Nevertheless the Trust highlight a number of findings contained within the latest Environmental Statement in terms of prolonged effects to wildlife whilst site works are ongoing and it is correct that in the case of the main waterbodies there would be an overall reduction in their size/area. However there is scope for a number of new ponds and scrapes to be provided (indeed some have already been provided) as shown on the approved layout plans. The details of these can be considered following the updated EMMP. The phased approach to working and the fact that phases 1, 2 and 3 are nearing completion could leave space for a range of bird and amphibian species when works move on. Translocation of amphibians or reptiles, for example, through the EMMP and EPS Licences could be undertaken to ensure the long term survival of these populations.
107. Overall it must be recognised that the original plans considered ecology and all other matters in the round and a balanced development was approved, that whilst being led by sport and recreational uses, left space and habitats for wildlife. The latest Environmental Statement has updated the ecological picture in terms of the notable habitats and protected species that are present on site, but it remains the case that impacts can be mitigated and managed. Therefore should the variation be approved, works would need to continue carefully with ecological oversight and an updated EMMP.
108. With no significant adverse effects identified, the proposals are considered to accord with WCS Policy WCS13 and WLP policies W3.22 and W3.23 which seek to protect ecology and the environment. Recognising the site is designated as a LWS, any residual harm to this designation, or to species and habitats of

importance, are considered to be outweighed by the need to continue with the development.

Landscape and Visual Impact

109. Landscape and visual impacts were previously assessed in reaching the original planning decision. It remains the intention for the development to be completed in line with the approved plans. As the reclamation works are still in progress and further time in which to complete this stage is being sought, the previously identified visual impacts will continue to some extent until 2024.
110. A number of moderate to substantial adverse visual effects will continue whilst tipping and land reclamation works are ongoing. However these have to some extent been moderated by the completion, or near completion, of phases 1, 2 and 3 along the western side of the site, and these short term impacts are clearly outweighed by the longer term benefits in completing the reclamation works, together with the range of proposed sport and recreational after uses.
111. The need to complete reclamation works, at the very least to the interim standard of grass, woodland and other vegetation, and thereafter with sport and recreational uses, remains the planning objective for this Green Belt site. This will achieve a long term improvement in the landscape and visual character of the site by revegetating this former colliery tip whilst retaining the existing mature woodland and vegetation. The approach accords with WLP Policy W4.6 regarding landscaping proposals and the need to harmonise waste disposal sites into the local landscape. Full details of the after uses are in place as a result of the existing planning permission and which sought to balance the social-economic and environmental outcomes across this site.
112. Various conditions need to be carried forward if further time is to be granted. These relate to measures to protect existing trees and vegetation where identified, and various restoration and aftercare conditions. As noted by Via Landscape the use of Ash should now be avoided and should be replaced by increased planting of other suitable tree species. Additional aftercare is in place for those parts of the site earmarked for biodiversity as part of the s106 legal agreement.
113. The applicant has proposed to submit an interim site reclamation scheme, should the variation be approved, which would reflect the current practice of seeding areas (to conservation grassland) that have been fully tipped and graded to the final contours. This approach is broadly in line with WLP Policies W4.7 and W4.8 which relate to alternative reclamation schemes being in place should the original scheme not be completed (for example if there were insufficient materials) and to render a site's unsatisfactory appearance acceptable. A condition (No.10) is therefore recommended to be added to secure the interim scheme.
114. Overall from a landscape and visual perspective there is a need to continue with the reclamation works in order to remove the current impacts (in the Green Belt) and deliver long term improvements to the local landscape and views.

Traffic and Access

115. There are no changes proposed on this matter, and a detailed reassessment is not required. Associated HGV movements are not anticipated to rise in intensity compared with current patterns and would continue to be limited by planning condition (No.23) to no more than 250 entering the site per week. These vehicle movements would also be governed by the routeing restrictions contained within the section 106 agreement which remains appropriate and would continue in force. This prohibits the associated HGVs from travelling East-West through the centre of Kirkby in Ashfield, along Chapel Street, Victoria Road, Urban Road and Diamond Avenue. Such vehicles thus continue up to the A38. It also further restricts HGV that are not owned and controlled by the applicant from using the Kirkby Cross mini roundabout (Church Street/Chapel Street) and so such vehicles have to reach Park Lane via Pinxton (via the B6019 Kirkby/Pinxton Lane) or via Selston.
116. It is acknowledged that the proposed variation would result in continued importation of inert wastes and restoration materials, until March 2024. However this is not an excessive period (with 14 months actually remaining) and further construction vehicle movements were originally anticipated to continue beyond the existing importation/grading end date in order to build out the sport after-uses. Under the current ownership a good proportion of the movements would be on the local network anyway owing in part to the applicant's other business vehicles accessing their nearby base off Church Hill, to the north east. County Council records confirm that, apart from instances of mud being reported on Park Lane (five such complaints since 2012), and one relating to HGVs travelling out of hours, the WPA does not have a record of complaints from the community regarding the impact of HGVs accessing the Bentinck site.
117. Circumstances on the local highway network do not appear to have materially changed although it is noted that two changes to the planning conditions/obligations have been previously approved. These related to the required visibility at the site entrance and a previous planning obligation to enlarge the 'Kirkby Cross' mini roundabout (Sutton Road/Chapel Street) which has since been deleted.
118. In addition to the HGV routeing, the applicant is also required to provide annual dilapidation surveys of a stretch of Park Lane near to the site entrance and measures are also in place to prevent mud being deposited on the road. (s106 agreement and conditions 18 and 19).
119. NCC Highways confirms there are no objections to the proposed variation subject to ensuring the continuation of the highway related planning conditions and obligations.
120. Waste Core Strategy Policy WCS11 does now provide a greater emphasis on and support for the use of sustainable/non road-hauled transport in undertaking waste management developments, however the existing conditions and controls are considered adequate to regulate an extension of the current operations. Although a rail freight line runs close by, the waste materials can be expected to be sourced locally from within the County and neighbouring Derbyshire and

from multiple and ever-changing construction sites, whereby only road haulage could offer a viable solution. The policy also seeks to make the best use of the existing transport network and to minimise distances travelled. The HGV routeing, together with the fact that materials can be locally sourced, is sufficient to satisfy the policy. In addition, the traffic can be satisfactorily accommodated on the local highway network (with the existing routeing provisions continuing) without unacceptable local disturbance in accordance with saved Waste Local Plan policies W3.14 and W3.15.

Public Rights of Way

121. There would be no impact to Kirkby Footpath 20 which skirts the western and north-western edges of the site, where land reclamation works are complete. (Condition 62 also ensures this).

Contamination issues including protection of ground/surface water

122. The risk of contamination, both from the existing colliery tip and also from imported waste and restoration materials, is managed through conditions on the current planning permission and separately under the terms of an Environmental Permit overseen by the Environment Agency. Ultimately the objective is to ensure that the tip is restored in such a manner that ground and surface waters are protected (including to the adjacent SSSI) and that the range of sport and recreational after uses can be delivered safely for these future users and visitors.
123. The consultees including the Environment Agency do not suggest that the previous assessment work requires updating for the proposed time extension and raise no objections. Via Reclamation have however reviewed the existing planning conditions that would need to be carried forward if further time is granted.
124. Conditions 12 to 15 deal with the existing/baseline tip and require ground investigations to be completed and if necessary, a scheme to remediate contamination. The necessary reports have previously been submitted for site phases 1, 2 and 3 which did not identify a need for undertaking remediation works. Further such investigations will be required before works commence in each of phases 4, 5 and 6. A minor change to the condition wording is recommended to make this clear and to reflect the phase by phase approach to the works that is now being followed. In addition condition 13 can be merged into condition 12 d).
125. Condition 11 then deals with the importation and reclamation works and stipulates that only uncontaminated soils, clays and soil making materials (uncontaminated inert waste such as concrete, hardcore and other similar demolition waste) which are fit for the purpose of restoring the site to a recreational/amenity/biodiversity after use shall be imported into the site. The WPA can request chemical analysis of the materials should it have reason to believe there has been non-compliance, however it has not needed to request

this to date. The Environmental Permit will also control the acceptable wastes in much greater detail.

126. With regards to the Permit, the Environment Agency advises that this is limited to 940,500 tonnes of waste and that the developer will need to apply to vary this to bring in additional materials in order to deliver the planning permission landform. This has been brought to the applicant's attention and a note can also be attached to the decision notice. In the event that this was not granted and/or the approved landform could not be completed, an alternative reclamation scheme/landform would need to be approved by the WPA.
127. Via Reclamation do not believe the proposed extension of time raises any additional significant effects in relation to land contamination compared with the existing/permitted situation. Imported materials will still need to comply with condition 11 which should be carried forward along with conditions 12 to 15.
128. One new recommendation has been requested and that is to require by condition the submission of a verification report prior to areas of the site opening up for sport or recreational use – to ensure the works have been completed properly and that the completed site is uncontaminated and suitable for reuse. Whilst the conditions do expressly require the development to be carried out in this way there is currently no validation stage within the conditions (except where contamination has been found to occur). Ordinarily a validation stage should form part of the suite of contamination requirements and so it is agreed and recommended that a new condition (No.15 in the appendix) should be included.
129. Subject to the updated conditions, the continued reclamation of the former colliery tip can be supported and the risk from contamination and pollution will continue to be appropriately controlled, thus meeting the requirements of WLP policies W3.5, W3.6, and W3.21, and paragraph 183 of the NPPF which seeks to ensure development sites are suitable for the proposed use taking account of ground conditions and any risks arising from land instability and contamination.

Noise/amenity

130. There are a small number of outlying residential properties in the area including two near to the site entrance on Park Lane. Noise impacts resulting from both the initial importation and reclamation works, as well as the after uses were previously considered in detail at the planning application stage and no further properties have been developed in the intervening time to affect this assessment. Conditions were then applied to safeguard residential amenity.
131. Condition 27 stipulates maximum permissible noise levels associated with the reclamation works as measured at the nearest residential properties to the north, south and east. In addition a perimeter bund has been completed on the northern boundary pursuant to existing condition 22 (this condition can therefore now be deleted). Other noise conditions require all plant and machinery associated with the ongoing works to be fitted with 'white noise' type reversing

alarms and there are also noise controls in place for elements of the future after uses such as for the golf clubhouse and for the wind turbines.

132. The County Council's noise advisor is content with the proposed variation to the time limit subject to these conditions being carried forward. This approach ensures the development would continue to comply with planning policy including saved Policy W3.9 of the Waste Local Plan and Policy WCS13 of the Waste Core Strategy.

Dust /Air Quality

133. A dust management plan has previously been approved pursuant to condition 17 in order to minimise the generation of dust and reduce its impact on sensitive receptors including habitats. The scheme includes a number of industry standard measures, including employment of water bowsers/damping of haul roads, sweeping of hard surfaces, and the temporary suspension of activities taking account of prevailing weather conditions. It also includes dust monitoring.
134. Subject to the scheme being carried forward within the planning conditions, the dust emissions from completing the remaining site reclamation works are capable of being controlled and minimised.
135. The continuation of HGV movements and use of on-site plant and machinery for a further, but relatively short additional period of time is unlikely to affect local air quality over and above that previously considered.
136. The proposals therefore are adjudged to continue to accord with saved WLP Policy W3.10.

HS2

137. In November 2016 the UK Government announced a preferred route for the proposed High Speed Two (HS2) railway from the West Midlands to Leeds – known as Phase 2b. The route passes through the western part of the Bentinck tip site, and in order to protect this preferred route from conflicting development, the Secretary of State issued formal safeguarding directions.
138. It is understood that designs and surveys were commenced for its construction. However, as part of the wider/integrated review of the rail network in the North and Midlands published in November 2021, the Government only committed to taking Phase 2b up to East Midlands Parkway. The review however confirmed that the remainder of the previously preferred route would remain safeguarded pending further study work on how to reach Leeds. A statutory consultation has therefore still been required with HS2 Ltd, the body overseeing the development of the new high speed rail network.
139. In their response, HS2 Ltd have no specific comment and confirm that the WPA is free to determine the present application. It should also be noted that the reclamation works have all but concluded along the western areas affected by

the safeguarding direction and the future after uses have yet to be developed, in particular the golf course. At this stage therefore the works do not prejudice the development of the remainder of Phase 2b, in the event of a Government changing/reverting to the previous plans.

Review of planning conditions

140. A limited update and review of the planning conditions has been undertaken to ensure they would continue to regulate the development. A summary of the changes follows:

- Condition 1 (time commencement) would be replaced with a statement confirming the scope of the permission as varied.
- Condition 2 (notification of commencement) would be replaced with a requirement for annual topographical surveys to be submitted.
- Condition 3 (requiring importation and grading works to be completed within 5 years) would be *varied* with a new end date of 7th March 2024 as per the application proposal.
- Existing condition 8 (surface water drainage for phase 3) would be deleted as this has been dealt with under related conditions. Condition 8 for phase 4 (previously condition 9) remains.
- New condition 10 would be added requiring submission of an interim restoration scheme.
- Condition 12 (investigations etc for contamination) would be clarified to apply to each phase of the development. Existing condition 13 merged in to 12.
- Condition 13 (existing condition 14) would be changed to require validation of contamination remediation with 3 months, rather than prior to the recreational/sport afteruses commencing.
- New condition 15 would be added to require verification work to demonstrate the restored areas are free of contamination within 3 months of completion of restoration works in the phase(s).
- Conditions 17 (dust management), 18 & 20 (details of site entrance), 32 (Existing C33- tree protection), 33 (existing C34- lagoon dewatering details), 34 (existing C35- internal haul routes), 35 (existing C36- reptile mitigation), 38 (existing C39- ditch details) would be updated to cite the previously approved details.
- Condition 21 (phased basis) would be amended with a new clause requiring restoration of phase 6 to follow on from phase 3.
- Condition 22 (construction of noise bund along northern boundary) would be deleted as the bund has been duly completed.

- Condition 39 (existing condition 40) would be updated to refer to previously approved Ecological Mitigation and Management Plan and further require an updated Plan by 30th April 2023.

Legal Agreement

141. The current Section 106 legal agreement, as amended by a Deed of Variation, will remain in force should section 73 planning permission be granted. The Obligations on the Developer are:
- Annual highway dilapidation surveys along a section of Park Lane;
 - HGV routeing (in two parts, but in general prohibits routes through the centre of Kirkby in Ashfield, along Chapel Street, Victoria Road, Urban Road and Diamond Avenue);
 - An additional 5 years of aftercare for the areas of ecological interest.

Other Options Considered

142. The report relates to the determination of a planning application. The County Council is under a duty to consider the planning application as submitted.
143. In the alternative that the proposed development is not permitted to proceed, the restoration of the former colliery tip would not be achieved as provided for in the planning permission and this would prejudice the delivery of the wider outdoor recreational facilities. Revised reclamation proposals would then need to be provided and approved largely involving a more minimal land grading or a cut/fill exercise across the central/eastern areas of the site. Conditions 55 and 56 provide scope for the WPA to pursue alternative restoration designs in the event of a failure to complete the approved landform.

Statutory and Policy Implications

144. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, the safeguarding of children and adults at risk, service users, smarter working, and sustainability and the environment, and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Crime and Disorder Implications

145. At present there is no public access onto the site and all plant and machinery are securely stored at night/weekends.

Data Protection and Information Governance

146. Given that no representations have been received from the public, it is considered that no data protection issues have been raised.

Human Rights Implications

147. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6.1 (Right to a Fair Trial) are those to be considered and may be affected due to the proximity of properties to the site and the associated HGV routes. The proposals have the potential to introduce or continue impacts for a further period of time such as noise, visual/views as well as the amenity impacts from passing HGV traffic accessing the site. However, these potential impacts need to be balanced against the wider benefits the proposals would provide in terms of restoring the former colliery tip and enabling a range of sport and recreational after uses to come forwards. Members need to consider whether the benefits outweigh the potential impacts and reference should be made to the Observations section above in this consideration.

Public Sector Equality Duty Implications

148. The report and its consideration of the planning application has been undertaken in compliance with the Public Sector Equality duty and there are no identified impacts to persons/service users with a protected characteristic.

Implications for Sustainability and the Environment

149. These have been considered in the Observations section above, including the environmental information contained within the EIA submitted with the application. A particular focus has been given to ecological and biodiversity impacts, including through a suite of updated surveys, and with mitigation measures to be secured through planning conditions.
150. There are no implications in respect of: finance, human resources, children/adults at risk safeguarding, or for service users.

Conclusion

151. The proposed variation to condition 3 is considered acceptable to enable site reclamation works to continue to completion and which will then allow the range of permitted sport and recreational after uses to be further developed in line with the original plans and vision. Phase 6 should however now be prioritised for restoration given its despoiled state. The proposals would bring broad environmental, social and economic benefits and have continued support from planning policy.

152. The delay in achieving the finished landform would prolong the associated temporary impacts (which are not considered to be significantly adverse) such as HGV traffic, landscape and visual, and disturbance for species such as waders and amphibians present on site. The delay/period remaining is however modest. There is also a delay in bringing forward the economic and social benefits that would result from the sport and recreational after uses whilst the site remains active for tipping and land grading works.
153. A refusal to the proposed variation would lead to a cessation of importation of restoration materials. Whilst some stockpiles are on site there would be a shortfall in the required volumes needed to finish the reclamation of phases 4, 5 and 6 (particularly phase 6). This could affect the ability to complete capping and reshaping works to the on-site lagoons and would also directly affect the ability to deliver the end uses, including the golf course.
154. A focussed Environmental Impact Assessment has found that subject to mitigation measures being employed and the provision of habitats as embedded within the scheme, there would be no residual harmful effects. Licenses may be required from Natural England in relation to safeguarding Great Crested Newts.
155. In order to manage and mitigate the ongoing works, should the variation be approved, the suite of planning conditions and obligations need to be carried forwards, as amended, and as bolstered by the additional conditions identified above in the report, notably to include an update to the Ecological Mitigation and Management Plan. Progress with the site will continue to be actively monitored by the WPA.
156. The works remain in overall accordance with the Development Plan, particularly waste planning policy contained within the Waste Core Strategy and Waste Local Plan, and the development remains appropriate in planning and Green Belt terms having regards to national planning policy. In the interests of achieving a sustainable development it is therefore recommended that the variation to time is approved.

Statement of Positive and Proactive Engagement

157. In determining this application the Waste Planning Authority has worked positively and proactively with the applicant by scoping of the application; assessing the proposals against relevant Development Plan policies and the National Planning Policy Framework. The Waste Planning Authority has identified all material considerations; forwarding consultation responses that may have been received in a timely manner; considered any valid representations received; liaised with consultees to resolve issues and progressed towards a timely determination of the application. Issues of concern have been addressed through planning conditions and obligations. The applicant has also been given advance sight of the updated planning conditions. Overall, this approach has been in accordance with the requirement set out in the National Planning Policy Framework.

RECOMMENDATIONS

158. It is RECOMMENDED that section 73 planning permission be granted subject to the conditions set out in Appendix 1. Members need to consider the issues set out in the report and resolve accordingly.

DEREK HIGTON

Interim Corporate Director – Place

Constitutional Comments (JL 05/01/23)

159. Planning & Rights of Way Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference set out in the Constitution of Nottinghamshire County Council

Financial Comments (KRP 05/01/2023)

160. As noted in the report there is an existing S106 legal agreement in place and this will remain in force to cover highway dilapidations, HGV routing and aftercare. There are no additional financial implications.

Background Papers Available for Inspection

The application file is available for public inspection by virtue of the Local Government (Access to Information) Act 1985 and you can view them at: www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=ES/4458

Electoral Divisions and Members Affected

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