

# Planning and Rights of Way Committee

**Tuesday, 17 January 2023 at 10:30**

County Hall, West Bridgford, Nottingham, NG2 7QP

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## AGENDA

- 1 Apologies for Absence
- 2 Declarations of Interests by Members and Officers
  - (a) Disclosable Pecuniary Interests
  - (b) Private Interests (Pecuniary and Non-Pecuniary)
- 3 Declarations of Lobbying
- 4 Minutes of the Last Meeting held on 13 December 2022 3 - 8
- 5 Variation of Planning Condition for the Bentinck Colliery Tip, Kirkby-in-Ashfield 9 - 58
- 6 Definitive Map Modification Order Application for Public Bridleways for Meden Vale, Warsop, Cuckney and Norton 59 - 78
- 7 Development Management Progress Report 79 - 88

### Notes

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.
- (2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

- (3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

Councillors or Officers requiring clarification on whether to make a declaration of interest are invited to contact Adrian Mann (Tel. 0115 804 4609) or a colleague in Democratic Services prior to the meeting.

- (4) Councillors are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.
- (5) This agenda and its associated reports are available to view online via an online calendar - <http://www.nottinghamshire.gov.uk/dms/Meetings.aspx>

Meeting: Planning and Rights of Way Committee

Date: Tuesday 13 December 2022 (commencing at 10:30am)

**Membership:****County Councillors**

Richard Butler (Chairman)  
Jim Creamer (Vice Chairman)

Mike Adams	Nigel Moxon
André Camilleri	Philip Owen
Robert Corden	Francis Purdue-Horan
Sybil Fielding	Sam Smith
Paul Henshaw	Daniel Williamson ( <b>apologies</b> )
Andy Meakin ( <b>apologies</b> )	

**Substitute Members**

None

**Officers and colleagues in attendance:**

Mike Hankin	-	Planning Applications Senior Practitioner
Jaspreet Lyall	-	Solicitor and Legal Advisor to the Committee
Adrian Mann	-	Democratic Services Officer
David Marsh	-	Major Projects Senior Practitioner
Jonathan Smith	-	Interim Group Manager for Planning

**Public speakers in attendance:**

Lea Hawkes	-	Variation of Planning Condition for Land off Private Road No.3, Colwick Industrial Estate, Colwick, Nottingham (item 5)
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**1. Apologies for Absence**

Andy Meakin	-	medical / illness
Daniel Williamson	-	medical / illness

**2. Minutes of the Last Meeting**

The minutes of the last meeting held on 1 November 2022, having been circulated to all Members, were taken as read and were confirmed and signed by the Chairman.

### **3. Declarations of Interests**

No declarations of interests were made.

### **4. Declarations of Lobbying**

No declarations of lobbying were made.

### **5. Variation of Planning Condition for Land off Private Road No.3, Colwick Industrial Estate, Colwick, Nottingham**

Mike Hankin, Planning Applications Senior Practitioner , introduced application 7/2022/1066NCC by Veolia Environmental Services (UK) Limited to vary the existing Planning Permission (7/2021/0648NCC) to enable the Colwick Waste Management Facility to operate without the use of the previously consented air filtration plant during periods when there are no waste shredding or refused-derived fuel (RDF) preparation activities being carried out, and to allow the passive ventilation of the building to be undertaken by permitting the opening of the air inlet louvres:

- a) The development site forms part of a wider area of industrial land on the Colwick Industrial Estate and is currently used for the open storage of drilling machinery and empty waste skips and containers. A new Sainsburys supermarket has been built 80m to the north-west and there is a Morrisons supermarket 150m to the north. The nearest residential properties are located to the north around 280m away, beyond the Colwick Loop Road.
- b) The original planning permission for the facility (which has not yet been implemented) provides consent for the development of a waste transfer station, in addition to scope to manage segregated food waste and produce RDF, with an appropriate filtration system designed to remove odours from the facility and control their release into the wider environment.
- c) The planning application seeks consent to modify the odour controls regulated under Condition 24 (Criteria C and D) of the existing planning permission, which require the installation and use of an air filtration plant during the daytime period when RDF would be manufactured, with the roof-mounted air vents to be closed during the night-time. The requested modification seeks to allow the site to operate initially as a waste transfer station only, without carrying out the RDF manufacturing and the importation and storage of segregated food waste. However, the air filtration plant would still be installed prior to the commencement of any RDF production activities or segregated food waste storage at the facility in the future, and would be operated at all times if and when the site is used for these purposes.
- d) The general industry practice is that waste transfer stations do not require air filtration equipment to operate. Other similar facilities operating in Nottinghamshire do not incorporate air filtration systems other than the Veolia facility in Kirkby-in-Ashfield, as this also manufactures RDF.

- e) The determination of the planning application requires an assessment to be made as to whether the alterations proposed to the site's operation in terms of modifying the composition of waste imported to the site, the arrangements for treating and processing this waste, and the arrangements to no longer install and use the previously-approved air filtration equipment during periods when the facility would not be used for RDF production or the delivery and storage of source segregated food waste, would continue to provide satisfactory odour control.
- f) In terms of the containment of odour within the building, to not use the air filtration plant and instead use a passive ventilation system has the potential to increase the risk of a greater odour impact on the wider environment. However, this is balanced against the fact that the level of odour release from the facility is likely to be less if it is not to be used for manufacturing RDF or storing source-segregated food.
- g) The National Planning Policy Framework and the National Planning Policy for Waste state that Waste Planning Authorities should work on the basis that the approved pollution control regime will be properly applied and enforced, so planning decisions should not seek to duplicate these controls. Since the original planning permission was issued, the applicant has obtained an Environmental Permit from the Environment Agency to operate the site in accordance with the modified odour controls for which the variation to the current planning permission is sought. The current application, therefore, ensures that the operation of the site permitted under the existing planning permission is consistent with the Permit in terms of its odour control.
- h) A consultation has been carried out on the proposed variation and no objections have been received.
- i) In conclusion, officers recommended that the proposed variation to the planning permission is reasonable and appropriate, on the basis that the revised method of operation of the facility will not result in significant levels of odour emissions that would adversely affect the amenity of occupiers of nearby land, and that the odour emissions from the facility will be controlled and regulated under the issued Environmental Permit.

With the permission of the Chairman, Lea Hawkes addressed the Committee in support of the application and the recommendations as set out in the report. Committee members had the opportunity to ask questions for the purposes of clarification, and the following points were confirmed by the applicant and officers:

- j) Due to a revision of Veolia's current strategy, the new facility will operate initially as a collection point for waste, only. As such, the filtration system intended for use as part of waste shredding or RDF preparation activities is not required and would represent an overly expensive system for odour control for a waste transfer station.
- k) The drainage measures for the site are set out in Condition 10 to the existing planning permission, which requires that waste is held inside the building to avoid

rain wash-off. There will be a sealed internal drainage system to capture liquid waste, which will be separate to the normal, exterior building drainage system designed to collect rainwater. The facility will be cleaned regularly, with a deep clean carried out twice per year. If a high build-up of waste residue occurs, the next scheduled deep clean will be brought forward.

After the presentation of the application and the representation made in support, the Committee discussed the following points:

- l) Prior to the meeting, members of the Committee visited a similar Veolia waste transfer station at Worksop. This facility was built away from residential properties, but housing developments were later constructed in closer proximity to the site. However, at most times, a strong odour does not carry beyond the facility boundaries. The County Council has received one direct complaint in relation to odour concerning the Worksop facility over the last 10 years, and no complaints have been raised with the County Council via Bassetlaw District Council.
- m) The Environment Agency has carried out an assessment of the application site and concluded that the operation of a waste transfer station in the context of the proposed variation to the existing planning permission would not give rise to significant issues leading to complaint in relation to odour outside the site boundary. As such, the Agency has issued an Environmental Permit as it considers that the right processes are in place to prevent a significant nuisance in relation to odour.
- n) Compliance with these controls will be monitored, and any complaints will be responded to appropriately. The Environment Agency will enforce the conditions of the granted Permit and, should the measures in place prove insufficient to control the odour effectively, it would put more controls in place. Controls are also introduced by way of the conditions to the planning permission. The Permit is intended to control odour so that it does not reach a level considered to be a statutory nuisance. Should the odour levels reach that of a statutory nuisance, Gedling Borough Council has the powers to undertake appropriate enforcement action. A full consultation process has been carried out, including the Borough Council, and no representations have been received.
- o) The Committee was advised that the Local Planning Authority is expected, under national policy, to defer to the Environment Agency in the assessment of matters of odour impact and control. Any new planning permission as proposed would not supersede the existing planning permission, but would operate concurrently. Within the context of the current application, the remit of the Committee is to consider whether the ventilation measures put forward for the usage of the facility as now proposed are acceptable within the terms of the relevant local planning policies and requirements.
- p) The Legal Advisor to the Committee explained that the need to defer to the Environment Agency is contained in the National Planning Policy Framework and the associated legislation that requires the Committee to make decisions in accordance with National Policy and the relevant Local Plan documents.

- q) The Committee was advised that, as it is now proposed for the facility to be used as a waste transfer station only and not for waste shredding or RDF production, the level of odour generated will be less than that anticipated in the original planning application, so the required level of odour mitigation measures is not as high. The operation of a waste transfer station would not normally justify the use of a filtration system designed to be used as part of waste shredding or RDF production processes.
- r) The Legal Advisor to the Committee set out the need for conditions to planning permission to be necessary, in accordance with the National Planning Policy Framework.
- s) Members of the Committee expressed concern that the effective odour control measures that are in place as part of the current planning permission were being reduced as a cost-saving measure, and that this could have a negative impact on residents. They considered that although the development site is within an industrial estate, there are still residential properties 280m away, so the best possible odour control measures should be maintained for the benefit of the residents of the area. They noted that there are a number of other sites on the industrial estate that produce strong odours already, so the further contribution from the new waste management facility could result in a negative impact on residents, particularly during the hotter period of the year, if not mitigated against as much as possible – including through the proper use of rapid-action doors, as set out in Condition 24.
- t) The Legal Advisor to the Committee explained that Gedling Borough Council would be responsible for investigating statutory nuisances caused by odour, and that the conditions in the proposed planning permission would be aimed at controlling any odour nuisances up to the statutory nuisance level.

Following a vote, the motion to grant planning permission for the reasons as set out in the report was not carried, as it was opposed by a majority of the members present. It was:

**Resolved (2022/055):**

- 1) To refuse the application on the basis that planning permission has already been granted for a facility with strong odour controls through a previous application. The current proposal makes these controls less robust and is not supported for this site because of its location near to other properties, with the subsequent potential for odour complaint. The site is too close to housing with regard to the potential for odour release from the facility.
- 2) To instruct officers to draft the formal reasons for the refusal of planning permission to convey the Committee's concerns, with the appropriate references to planning policy.

**6. Development Management Progress Report**

Mike Hankin, Planning Applications Team Leader, presented a report on the recent Planning applications received and decisions taken, and the details of applications likely to come to Committee in the near future. The following points were discussed:

- a) The report details the applications received between 14 October 2022 and 25 November 2022, and the decisions made since the last Committee meeting on 1 November 2022.
- b) In relation to the application concerning the Daneshill Landfill Site, Lound (1/20/00544/CDM), the Environment Agency has declined to issue an Environmental Permit for the processing of soils containing asbestos at the site. As a result, the planning application has been refused under delegated powers.
- c) The application concerning Ness Farm and Cromwell Quarry, Cromwell (3/22/01790-88-87/CMA) is now likely to arise at the February meeting of the Committee, rather than at the January meeting. A new application relating to the Outwood Academy, Portland is also likely to arise at the February meeting.

**Resolved (2022/056):**

- 1) To note the Development Management Progress Report, and to confirm that the Committee required no further actions to be taken in relation to the contents of the report.

There being no further business, the Chairman closed the meeting at 11:53am.

**Chairman:**



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 20<sup>th</sup> November 2012 and planning permission was subsequently issued on 11<sup>th</sup> 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 148,000m<sup>3</sup> 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 ringed 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, linnet 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 148,000m<sup>3</sup> of material needs to be sourced.
89. The applicant has previously declared to the WPA that 832,795m<sup>3</sup> 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 (495,000m<sup>3</sup>). 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 105,000m<sup>3</sup> 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 7<sup>th</sup> 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 30<sup>th</sup> 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](http://www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=ES/4458)

#### **Electoral Divisions and Members Affected**

Kirkby South - Cllr Daniel Frederick Williamson

Report Author/Case Officer  
Joel Marshall  
0115 9932578

For any enquiries about this report, please contact the report author.



**RECOMMENDED PLANNING CONDITIONS**

1. This permission is for the continuation of the restoration of the former Bentinck tip site using site derived and imported restoration materials until 7 March 2024 (and thereafter 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) without compliance with condition 3 of the planning permission as originally imposed. This permission comes into immediate effect.

*Reason: To define the development as permitted and as varied under s73 of the Town and Country Planning Act 1990.*

2. A topographical survey (minimum of 0.5m contour intervals) of the site shall be submitted to the Waste Planning Authority (WPA) by 1 March each year identifying areas of the site which are unrestored, those restored, and those undergoing restoration.

*Reason: To monitor the phased restoration of the tip in accordance with Policy W4.1 of the Nottinghamshire and Nottingham Waste Local Plan.*

3. The importation of inert material onto the site and its grading to the final approved levels shall be completed by 7 March 2024.

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

4. For each phase of the development the WPA shall be notified in writing of the date of completion of the importation of inert material and its grading to the final approved landform at least seven days, but not more than 14 days, following the completion of these works.

*Reason: To enable the WPA to monitor compliance with the conditions of the planning permission.*

**Approved plans**

5. From the commencement of the development to its completion, a copy of this permission including all plans and documents hereby approved, and any other plans and documents subsequently approved in accordance with this permission, shall always be available at the site offices for inspection by the WPA during normal working hours.

*Reason: To enable the WPA to monitor compliance with the conditions of the planning permission.*

6. The development hereby permitted shall only be carried out in accordance with the details contained within the planning application and Environmental Statement (ES) received by the WPA on 24 February 2012 and the Regulation 22 Submissions received on 17 August 2012 and 27 September 2012, as supplemented by the further Environmental Statement received 25/07/22, and in particular the plans and details identified below, unless amendments are made pursuant to the other conditions below:
- (i) 'Drawing Number BG 3/1 – Existing Site Layout' received by the WPA on 24 February 2012;
  - (ii) 'Drawing Number BG 3/2A – Proposed Site Layout' received by the WPA on 17 August 2012;
  - (iii) 'Drawing Number BG 3/2A – Sections' received by the WPA on 17 August 2012;
  - (iv) 'Drawing Number LH/1 – Landscape and Restoration Proposals and Sections' received by the WPA on 17 August 2012;
  - (v) 'Drawing Number BG 3/3 – Driving Range Building' received by the WPA on 24 February 2012;
  - (vi) 'Drawing Number BG 3/4 – Green Keepers Building' received by the WPA on 24 February 2012;
  - (vii) 'Drawing Number BG 3/5 – Equestrian Centre Stables and Office Building Layout' received by the WPA on 24 February 2012;
  - (viii) 'Drawing Number BG 3/6 – Equestrian Centre Building Elevations and Layout' received by the WPA on 24 February 2012;
  - (ix) 'Drawing Number BG 3/6A – Equestrian Centre: Hay Store' received by the WPA on 24 February 2012;
  - (x) 'Drawing Number BG 3/7A – Layout of Camping and Adventure Play Area' received by the WPA on 17 August 2012;
  - (xi) 'Drawing Number BG 3/8 – Manager/Security Office and Accommodation' received by the WPA on 24 February 2012;
  - (xii) 'Drawing Number BG 3/9 – Campsite Toilet/Shower Facilities' received by the WPA on 24 February 2012;
  - (xiii) 'Drawing Number BG 3/10 – Outdoor Classroom' received by the WPA on 24 February 2012;
  - (xiv) 'Drawing Number BG 3/11A – Restoration Phasing Plan' received by the WPA on 17 August 2012;
  - (xv) 'Drawing Number BG 3/12 – Football Pitch: Changing Rooms' received by the WPA on 24 February 2012;
  - (xvi) 'Drawing Number BG 3/13 – Proposed Bird Hide' received by the WPA on 24 February 2012;
  - (xvii) 'Drawing Number BG 3/14 – Proposed Car Park Lighting' received by the WPA on 24 February 2012;

- (xviii) 'Drawing Number BG 3/15A – Luminance Plan' received by the WPA on 17 August 2012;
- (xix) 'Drawing Number BG 6/1A – Landscape and Restoration' received by the WPA on 17 August 2012;
- (xx) 'Drawing entitled 'Endurance Wind E-3120 Elevation' received by the WPA on 24 February 2012;
- (xxi) 'Drawing Number 11/1843/01 Revision A – Clubhouse: Proposed Site Layout' received by the WPA on 24 February 2012;
- (xxii) 'Drawing Number 11/1743/02 Revision A – Clubhouse: Proposed Lower Floor Layout' received by the WPA on 24 February 2012;
- (xxiii) 'Drawing Number 11/1843/03 Revision A – Clubhouse: Proposed Upper Floor Layout' received by the WPA on 24 February 2012;
- (xxiv) 'Drawing Number 11/1843/04 Revision A – Clubhouse: Proposed Elevations (Sht 1)' received by the WPA on 24 February 2012;
- (xxv) 'Drawing Number 11/1843/05 – Clubhouse: Proposed Elevations (Sht 2)' received by the WPA on 24 February 2012;
- (xxvi) 'Drawing Number 11/1843/06 Revision A – Employment Buildings: Proposed Layouts and Elevations' received by the WPA on 24 February 2012'.

*Reason: To enable the WPA to monitor compliance with the conditions of the planning permission.*

### **Inspection of the Cuttail Brook culvert**

7. Prior to the importation of inert material onto Phase 4, as detailed on 'Drawing Number BG 3/11A - Restoration Phasing Plan' received by the WPA on 17 August 2012, a programme for the inspection and maintenance of the section of the Cuttail Brook culvert which lies within the application area, as detailed on 'Drawing Number BG 3/11A – Restoration Phasing Plan' received by the WPA on 17 August 2012, shall be/shall have been submitted to and approved in writing by the WPA. The scheme shall provide for:
  - (a) A survey of the culvert to be carried out prior to the commencement of the importation of inert material onto Phase 4;
  - (b) The submission of the culvert survey to the WPA within six months of the commencement of importation of inert material onto Phase 4 along with a programme for subsequent maintenance including timing/phasing arrangements which shall provide for any refurbishment and repair works to be carried out prior to the deposit of any inert material within phases 5 and 6;
  - (c) The provision of a further survey to take place following the completion of the importation of inert material onto the site and its grading to the final approved landform, as notified under Condition 4 above, to be undertaken no later than one year following the completion of the

importation of inert material onto the site and its grading to the final approved landform; and

- (d) The submission of the further culvert survey to the WPA along with a further programme for subsequent maintenance including timing/phasing arrangements which shall provide for any further refurbishment and repair works to be carried out within three months of the further survey being carried out.

The scheme shall be implemented in accordance with the approved details.

*Reason: To protect surface and groundwater resources in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

### **Surface water and foul sewage drainage**

8. Prior to the importation of inert material onto Phase 4, as detailed on 'Drawing Number BG 3/11A – Restoration Phasing Plan' received by the WPA on 17 August 2012, a scheme for the disposal of surface water shall have been implemented in accordance with details previously submitted to and approved in writing by the WPA. The scheme shall include details of how the adjacent rail line will not be adversely affected by changes to surface water drainage from the site, including details of the locations of any soakaway or lagoon constructed as a means of storm/surface water disposal or storage. The scheme shall be implemented in accordance with the approved scheme.

*Reason: To protect surface and groundwater resources in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

9. A scheme to dispose of foul drainage shall be submitted to and approved in writing by the WPA prior to the installation of a foul water drainage system at the site. The scheme shall include details of the discharge arrangements which shall demonstrate that there would be no adverse impacts on the adjacent Sites of Special Scientific Interest. The foul water drainage system shall be installed in accordance with the approved details.

*Reason: To protect surface and groundwater resources in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

### **Restoration works**

10. By 30th April 2023, or as otherwise agreed by the WPA, an interim restoration scheme shall be submitted for written approval. The scheme shall follow the principles of the Landscape and Restoration Proposals (shown on Drawing BG 6/1a) and details provided in Chapter 6 of the 2012 ES, as supplemented by a Reg. 22 response, including the Ecological Mitigation and Management Plan (EMMP) as required to be updated by condition 39.



*Reason: To ensure there is an adequate interim restoration of the site before afteruses are developed, or in the event that these are not fully developed.*

11. 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 afteruse shall be imported into the site. If, in the opinion of the WPA, it is considered that the materials being imported into the site are not fit for purpose then, within two weeks of a written request from the WPA, detailed chemical analyses of samples of the materials imported onto the site shall be undertaken and submitted to the WPA for assessment and for its approval in writing. The analyses, based on criteria derived from BS:3882 and guidance from the Contaminated Land Exposure Assessment, shall provide data on the concentrations of the following and any other compounds or substances deemed appropriate by the WPA:

- (a) pH;
- (b) Arsenic;
- (c) Asbestos;
- (d) Boron;
- (e) Cadmium;
- (f) Chromium (III and IV);
- (g) Copper;
- (h) Hydrocarbons;
- (i) Lead;
- (j) Mercury (inorganic);
- (k) Nickel;
- (l) Selenium; and
- (m) Zinc.

Should the results of the analyses confirm that unsuitable material has been imported onto the site, it shall be removed from the site within two weeks of notification from the WPA, and disposed of at a suitably licensed site.

*Reason: To ensure there is no unacceptable risk of pollution to groundwater or surface water, in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

12. No development shall commence in any phase of site until:
- a) A phase 1 desk top study has been submitted to and approved in writing by the WPA;
  - b) The site investigation contained in the phase 1 desk top study submitted in accordance with Condition 12 (a) has been completed and approved in writing by the WPA and a risk assessment has been completed; and

- c) A method statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters and on the proposed land use, using the information obtained from the site investigation, has been submitted to and approved in writing by the WPA prior to that remediation being carried out on the site.
- d) No development shall commence in the particular phase of the site until the remediation works approved under (c) above have been completed in accordance with the approved method statement to the satisfaction of the WPA.

*Reason: To ensure that the proposed final uses of the site do not pose a risk to public health or the wider environment by ensuring that the site is made suitable for its intended use, in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

13. Validation of the remedial scheme carried out in accordance with Condition 12 above, including evidence of post remediation sampling and monitoring results to demonstrate that the required remediation has been fully effective, shall have been submitted to and have been approved in writing by the WPA within 3 months of the completion of the remediation or such other timescale as may first be agreed in writing with the WPA.

*Reason: To ensure that the proposed final uses of the site do not pose a risk to public health or the wider environment by ensuring that the site is made suitable for its intended use, in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

14. If, during the approved restoration works, contamination not previously identified through the details submitted under Condition 12 above is found to be present at the site, then no further development shall be carried out until a method statement has been submitted to and been approved in writing by the WPA, detailing any additional remediation requirements to deal with the unsuspected contamination, including measures to minimise the impact on ground and surface waters and on the proposed land use, using the information obtained from additional site investigations. The method statement shall be implemented in accordance with the approved details prior to any of the recreational or other facilities approved by this permission first being brought into use or such other timescale as may first be agreed in writing with the WPA.

*Reason: To ensure that the proposed final uses of the site do not pose a risk to public health or the wider environment by ensuring that the site is made suitable for its intended use, in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

15. Within 3 months of completion of the restoration in any phase or phases and prior to any of the recreational or other facilities approved by this permission first being brought into use in those phases (or such other timescale as may first be agreed in writing with the WPA), a verification report shall be submitted for the written approval by the WPA. The verification report should include evidence e.g., ground investigation results and ground gas risk assessments, to show that the site is uncontaminated and suitable for use in relation to the approved post-restoration land uses.

*Reason: To ensure that the proposed final uses of the site do not pose a risk to public health or the wider environment by ensuring that the site is made suitable for its intended use, in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

16. The development hereby permitted shall be carried out in a manner which mitigates the adverse impacts of undetonated seismic charges on the site. All precautionary measures deemed necessary to mitigate any potential impacts from the undetonated seismic charges on the site shall be undertaken by the operator in accordance with appropriate expert advice during both the restoration works and any groundworks associated with the construction of any buildings in the vicinity of the boreholes located on the site.

*Reason: To ensure the safety of the tip site and prevent any pollution to groundwaters in accordance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

17. Dust shall continue to be minimised and monitored in accordance with the previously approved Dust Management Plan Rev A received by the WPA on 01/07/13 and approved on 22/08/13.

*Reason: To ensure that dust impacts associated with the operation of the development are minimised, in accordance with Policy W3.10 of the Nottinghamshire and Nottingham Waste Local Plan.*

18. Construction access shall continue as previously approved with the access road surface maintained with a bound material for a minimum distance of 50 metres behind the highway boundary and a minimum of 10 metres of kerbed radii.

*Reason: To reduce the possibility of deleterious material being deposited on the public highway and in the interests of highway safety in accordance with Policy W3.11 of the Nottinghamshire and Nottingham Waste Local Plan.*

19. Measures shall be employed to prevent the deposit of mud, clay and other deleterious materials on the surrounding public highway during the restoration works. Such measures shall include the retention of the existing wheel washing facilities on the access road; and regular sweeping and cleaning of the access road, vehicular circulation routes and the adjacent public highway. In the event that such measures prove inadequate, then within one week of a written request from the WPA, a scheme including revised and additional steps or measures to be taken in order to prevent the deposit of materials upon the public highway shall be submitted to the WPA for its approval in writing. The approved steps for the protection of the surrounding roads shall be implemented immediately upon their approval and thereafter maintained throughout the restoration works.

*Reason: In the interests of highway safety in accordance with Policy W3.11 of the Nottinghamshire and Nottingham Waste Local Plan.*

20. Visibility splays at the site entrance of 2.4 metres by 120 metres shall be kept free of all obstructions and structures exceeding 0.26 metres in height (as detailed on Dwg H/1 – Visibility Splay dated May 2011 as approved under NMA/2948 on 24/12/13).

*Reason: To afford adequate visibility at the access to the site to cater for the expected volume of traffic joining the existing highway network and in the interests of highway safety in accordance with Policy W3.14 of the Nottinghamshire and Nottingham Waste Local Plan.*

21. The restoration of the site shall be carried out on a phased basis in accordance with the details on 'Drawing Number BG 3/11A – Restoration Phasing Plan' received by the WPA on 17 August 2012, except that works in phase 6 shall follow immediately after phase 3. The WPA shall be notified in writing of the completion of each phase of restoration.

*Reason: To minimise the operating area of the site at any one time and to provide for the phased disposal and restoration of the site in accordance with Policy W4.1 of the Nottinghamshire and Nottingham Waste Local Plan.*

22. The existing access road shall be maintained throughout the restoration works so as to ensure that there is no unregulated discharge of surface water onto the public highway. Should the access road be widened, resurfaced or extended to provide access to the offices and equestrian centre, no works shall be carried out until details of the provisions to prevent the unregulated discharge of surface water onto the public highway have been submitted to and approved in writing by the WPA. The access road shall only be widened, resurfaced or extended in accordance with the approved details and thereafter maintained to the satisfaction of the WPA.

*Reason: In the interests of highway safety in accordance with Policy W3.14 of the Nottinghamshire and Nottingham Waste Local Plan.*

23. The total number of HGVs entering the site shall not exceed 250 in any week. A written record of all HGV movements to the site shall be maintained by the operator and made available to the WPA in writing within seven days of a written request from the WPA.

*Reason: In the interests of highway safety in accordance with Policy W3.14 of the Nottinghamshire and Nottingham Waste Local Plan.*

24. All plant and machinery used on the site for the purposes of grading colliery spoil or inert restoration material to the final approved levels shall incorporate 'white noise' reversing warning devices and be fitted with noise abatement measures and silencers maintained in accordance with the manufacturers' recommendations and specifications.

*Reason: To minimise potential noise disturbance at the site in accordance with Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan.*

25. Any cranes and jibbed machines used in connection with the restoration works hereby permitted shall be positioned so that the jib or any suspended load does not swing over adjacent railway infrastructure or within three metres of the nearest rail if the boundary is closer than three metres.

*Reason: To maintain the safety of railway operations.*

26. All cranes, machinery and constructional plant must be so positioned and used to prevent the accidental entry onto railway property of such plant, or loads attached thereto, in the event of failure.

*Reason: To maintain the safety of railway operations.*

27. Noise levels associated with the restoration works hereby permitted shall not exceed 55.0 dB<sub>L<sub>Aeq</sub> 1 hour (free field)</sub> at The Hollies, Park Lane, Kirkby-in-Ashfield, 25 Main Road, Annesley Woodhouse, and Suvla Bay, Salmon Lane, Annesley Woodhouse.

*Reason: To minimise potential noise disturbance at the site in accordance with Policy W3.9 of the Waste Local Plan.*

28. Noise levels associated with the construction of the golf clubhouse, driving range, the camping shower block, the adventure playground, equestrian centre, and office block hereby permitted shall not exceed 70.0 dB<sub>L<sub>Aeq</sub> 1 hour (free field)</sub> at The Hollies, Park Lane, Kirkby-in-Ashfield, 25 Main Road, Annesley Woodhouse, and Suvla Bay, Salmon Lane, Annesley Woodhouse.

*Reason: To minimise potential noise disturbance at the site in accordance with and Policy W3.9 of the Waste Local Plan.*

29. Except in an emergency, which shall be notified to the WPA in writing within no more than 48 hours of its occurrence, the restoration works hereby permitted shall only be undertaken during daylight hours and, in any event, within the following hours only:

Mondays to Fridays 0700 hrs to 1800 hrs

Saturdays 0700 hrs to 1300 hrs

There shall be no working on Sundays, Public and Bank Holidays.

*Reason: In the interests of amenity in accordance with Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan.*

30. Except in an emergency, which shall be notified to the WPA in writing within no more than 48 hours of its occurrence, construction works hereby permitted involving earth moving, piling works, foundation construction and external building works shall only be undertaken during daylight hours and, in any event, within the following hours only:

Mondays to Fridays 0800 hrs to 1800 hrs

Saturdays 0800 hrs to 1300 hrs

There shall be no working on Sundays, Public and Bank Holidays.

Construction works involving the internal fitting of any buildings shall be permitted to start at 0700 hrs.

*Reason: In the interests of amenity in accordance with Policy W3.9 of the Nottinghamshire and Nottingham Waste Local Plan.*

31. There shall be no changes to ground levels on land within 10 metres of the site boundary adjacent to the railway line until details of those changes, including cross sections, have been submitted to the WPA and have been approved in

writing by the WPA. Restoration works within 10 metres of adjacent railway infrastructure shall be carried out in accordance with the approved details.

*Reason: To maintain the safety of railway operations.*

## Ecology

32. Measures to protect all retained trees, hedges and shrubs during each phase of restoration shall be implemented and maintained throughout that phase of restoration in accordance with the details set out in the document entitled 'Protection to Trees, Hedges and Shrubs Revision A' received by the WPA on the 25<sup>th</sup> June 2013 in respect of condition 33 of planning permission 4/V/2012/0096 approved on 20/08/13.

*Reason: To ensure the protection of vegetation on the site in accordance with Policy W3.4 of the Nottinghamshire and Nottingham Waste Local Plan.*

33. Dewatering of the lagoons, as part of capping work taking place, shall be undertaken in full accordance with the SLR report Ref: 405.02711.00005 dated 14/12/16 as previously approved by the WPA on 02/03/17 pursuant to condition 34 of planning permission 4/V/2012/0096.

*Reason: To ensure that no legally protected species are adversely affected by the development and to ensure compliance with Policy W3.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

34. HGVs depositing inert restoration material onto any phase of the site shall only use the previously approved haul routes as shown on the plan 'Site Haul Routes' dated May 2013 and as approved by the WPA on 20/08/13 pursuant to condition 35 of planning permission 4/V/2012/0096.

*Reason: In order to minimise the impact of the development on features of ecological interest.*

35. Restoration works in phases 1, 3 and 5 shall be undertaken in accordance with the approved Reptile Method Statement (SLR ref 406.04487.00002 dated July 2013), or any subsequent scheme that may be approved by the WPA.

*Reason: In the interests of protecting species and their habitats in accordance with Policy W3.22 of the Nottinghamshire and Nottingham Waste Local Plan.*

36. Prior to the removal of vegetation from any phase of the restoration works, as detailed on 'Drawing Number BG 3/11A – Restoration Phasing Plan' received by the WPA on 17 August 2012, a qualified ecologist shall walk the affected land to ensure that no species as identified in the Ecological Mitigation and Management Plan or species protected by the Wildlife and Countryside Act 1981 are present. A report detailing the findings of the survey shall be submitted to the WPA for its approval in writing prior to restoration works commencing within that phase. In the event that the ecological survey identifies any protect species, then the report shall provide recommendations for appropriate mitigation measures to ensure the satisfactory protection of the

species. The mitigation measure shall be implemented in accordance with the approved details prior to the removal of any vegetation within that phase.

*Reason: In the interests of protecting species and their habitats in accordance with Policies W3.21, W3.22 and W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

37. Site clearance operations that involve the removal or destruction of vegetation shall not be undertaken during the months of March to August inclusive except with the prior written approval of the WPA and in such circumstances following the carrying out and submission to the WPA for its approval in writing of an ecological appraisal undertaken by an appropriately qualified person in accordance with the details required under Condition 36 above.

*Reason: In the interests of protecting species and their habitats in accordance with Policies W3.21, W3.22 and W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

38. The surface water ditch on the south eastern boundary of the site detailed on 'Drawing Number BG 3/2A – Proposed Site Layout' received by the WPA on 17 August 2012 shall be maintained/utilised until the completion of site restoration earthworks/reprofiling whereafter proposed drainage details shall be carried out as per the SLR letter ref 05.02711.00005 dated 14/12/16 and drawings BNT-1 'Existing Site Overview' and BNT-2, 'Proposed Drainage Details Overview' (dated December 2016) as previously approved by the WPA on 02/03/17 pursuant to condition 39 of planning permission 4/V/2012/0096.

*Reason: To ensure the development does not have an adverse impact on the Annesley Woodhouse Quarries Site of Special Scientific Interest in accordance with Policy W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

39. The restoration of the site shall initially be carried out in accordance with the Ecological Mitigation and Management Plan received by the WPA on 17 August 2012, but thereafter in accordance with an updated EMMP which shall be submitted to the WPA for its approval no later than 30<sup>th</sup> April 2023. The EMMP shall in particular provide for:

- (a) Habitat retention, enhancement and creation for grassland, woodland and scrub, hedgerows, ponds and reedbeds;
- (b) Mitigation and habitat creation for great crested newts and other amphibians, birds, water voles, reptiles, bats, and terrestrial invertebrates;
- (c) Habitat management and monitoring.

*Reason: In the interests of protecting species and their habitats in accordance with Policies W3.21, W3.22 and W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

### **Sports pitch construction and maintenance**

40. Any alternative use of the football pitches shall be restricted to the full sized pitch and the  $\frac{3}{4}$  sized pitch which are closest to the main car park as detailed on

'Drawing Number BG 3/2A – Proposed Site Layout' received by the WPA on 17 August 2012.

*Reason: To minimise the impact of activities on the site on features and species of ecological interest.*

41. No floodlighting shall be erected to illuminate the football pitches unless details have previously been submitted to and approved in writing by the WPA. Development shall be carried out in accordance with approved details.

*Reason: To minimise the impact of activities on the site on features and species of ecological interest.*

### **Construction of buildings and associated infrastructure**

42. The internal infrastructure layout of the site shall not be installed until details of road geometry, car/cycle parking facilities, turning facilities, access widths, gradients, surfacing, street lighting, structures, visibility splays, and a travel plan have been submitted to and approved in writing by the WPA. The details submitted shall comply with the County Council's most up-to-date Highway Design and Parking Guides. The internal infrastructure of the site shall be installed in accordance with the approved details.

*Reason: To minimise congestion on the public highway and in the interest of highway safety.*

43. Prior to their use on site, samples of proposed facing materials and finishes, including the colour of glazing frames, on all buildings to be constructed shall have been submitted to and been approved in writing by the WPA. The development shall be carried out in accordance with the approved details.

*Reason: In the interest of visual amenity and in accordance with Policy ST1 of the Ashfield Local Plan Review.*

44. All windows on the western elevation of the function room in the clubhouse, as detailed on 'Drawing Number 11/1843/04 Revision A – Clubhouse: Proposed Elevations (Sht 1)' received by the WPA on 24 February 2012, shall be sealed units.

*Reason: In order to minimise the impact of the development on features of ecological interest.*

45. The driving range lighting shall be installed so as to provide luminance and light spill levels in accordance with the details on 'Drawing Number BG 3/15A – Luminance Plan' received by the WPA on 17 August 2012. The lighting shall be maintained to provide these levels of luminance and light spill.

*Reason: In order to minimise the impact of the development on features of ecological interest and to protect motorway users.*

46. Prior to being installed, design details, locations, height, hours of illumination and light spread of external lighting to be installed on any of the buildings and elsewhere within the site, shall have been submitted to and been approved in writing by the WPA. The lighting shall be installed in accordance with the



approved details and shall be so maintained throughout the life of the development.

*Reason: In the interest of visual amenity and in accordance with Policy ST1 of the Ashfield Local Plan Review.*

47. The designated pathway from the access road to the bird hide shall be located in accordance with the details on 'Drawing Number BG 6/1A – Landscape and Restoration' received by the WPA on 17 August 2012. Suitable signs shall be erected in the main car park to direct the public to the bird hide via the designated path.

*Reason: In order to minimise the impact of the development on features of ecological interest.*

## **Restoration**

48. The site shall be restored in accordance with 'Drawing Number BG 6/1A – Landscape and Restoration' received by the WPA on 17 August 2012, except that the relevant submissions under Condition 49 below shall provide for additional areas of natural regeneration suitable for dingy skipper.

*Reason: To ensure the proper restoration of the site in accordance with Policy W4.6 of the Nottinghamshire and Nottingham Waste Local Plan.*

49. Within three months of the date of the completion of the importation of inert material and the reprofiling of the landform on any phase, as notified under Condition 21 above, details of the landscape and ecology management for each phase shall be submitted to the WPA for its approval in writing. The details shall include:

- (a) Planting proposals showing numbers, species, density of planting, positions, sizes and establishment methods of all trees and shrubs, which shall be of native genetic origin appropriate to the local area and shall accord with the species mixes detailed in the Ecological Mitigation and Management Plan received by the WPA on 17 August 2012;
- (b) Native species grassland seed mixes for neutral, damp, calcareous and acidic grassland areas (the scope and scale of which shall be determined by analysis of the substrates imported into each phase and any part of therein), and planting within ponds, including rates of sowing and establishment methods, which shall be of native genetic origin and shall accord with the species mixes in the Ecological Mitigation and Management Plan received by the WPA on 17 August 2012 with the exception of:
  - 1. In the neutral grassland mix (MG5), meadow saxifrage shall not be included and the mix shall include no more than 12 herb species;
  - 2. In the damp grassland mix (MG4/MG10), meadow saxifrage, pepper saxifrage and devil's-bit scabious shall not be included and the mix shall include no more than 12 herb species;

3. In the calcareous mix, common rockrose and dropwort shall not be included and the mix shall include no more than 12 herb species;
  4. In the acidic mix, bitter vetch, viper's bugloss, devil's-bit scabious, crested dogtail, sweet vernal grass and chewing fescue shall not be included and the mix shall include no more than six herb species to include tormentil, sheep's sorrel, heath bedstraw and harebell;
  5. For the planting in ponds, frogbit shall not be included and the details submitted shall detail a commitment to using plant material salvaged from existing water bodies on the site to ensure local provenance and the adaptation of species to local conditions.
- (c) Substrate penetration (where required), including the creation of micro-topography features;
  - (d) The extend of areas of natural regeneration;
  - (e) Boundary and fencing treatments;
  - (f) Confirmation that habitats considered to support foraging and commuting bats would not be provided within 50 metres of the two wind turbines in phases 1 and 3;
  - (g) Provision for the submission of an annual aftercare report for the five year aftercare period which shall detail works undertaken in the previous 12 months and those proposed for the following 12 months;
  - (h) Timetable for the implementation of the restoration works.

The restoration of each phase shall be carried out in accordance with the approved details.

*Reason: To ensure the phased restoration of the site in accordance with Policies W4.1 and W4.6 of the Nottinghamshire and Nottingham Waste Local Plan.*

50. Ornamental planting on the site shall only be planted within the vicinity of the clubhouse and only in accordance with details previously submitted to and approved in writing by the WPA.

*Reason: To safeguard areas and features of ecological interest elsewhere on the site in accordance with Policy W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

51. No chemical shall be used to treat weeds on areas of woodland and scrub planting within 50 metres of open water habitats and the Bogs Farm Site of Special Scientific Interest.

*Reason: To safeguard areas and features of ecological interest in accordance with Policy W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

52. Any tree planting close to the adjacent railway line shall be planted at a distance in excess of their mature height from railway property.

*Reason: To maintain the safety of railway operations.*

## Aftercare

53. Upon the completion of restoration works on any phase of the site, as required by Condition 49 above, that phase shall enter into a five year aftercare period. Prior to any phase being entered into aftercare, the extent of the area and its date of entry into aftercare shall be agreed in writing with the WPA.

*Reason: To ensure the proper restoration of the site in accordance with Policy W4.9 of the Nottinghamshire and Nottingham Waste Local Plan.*

54. The aftercare and long-term management of the restored areas shall be carried out in accordance with the details approved under Condition 49 above. Site management meetings shall be held with the WPA to assess and review the annual programme of landscaping, restoration and site maintenance as approved under Condition 49 above, having regard to the conditions of the land, progress in its rehabilitation and other relevant factors.

*Reason: To ensure the proper restoration of the site in accordance with Policy W4.5 of the Nottinghamshire and Nottingham Waste Local Plan.*

## Alternative Restoration

55. Should, for any reason, the restoration works hereby permitted not be completed in full or in part within the timescales permitted under Condition 3 above, then, within three months of the receipt of a written request from the WPA, a revised scheme for the restoration of the site shall be submitted to the WPA for its approval in writing. Such a scheme shall include details of the regarding of any restoration material and soils on site onto unrestored areas, final contours, sowing, planting of trees and shrubs, drainage and fencing.

*Reason: To secure the proper restoration of the site within an acceptable timescale.*

56. The revised restoration scheme approved under Condition 55 shall be implemented within 12 months of its approval by the WPA, and shall be subject to the aftercare provisions of Conditions 53-54 above.

*Reason: To secure the proper restoration of the site within an acceptable timescale.*

## Ongoing operational details

57. Prior to the golf course and horse riding trail being brought into use, details shall have been submitted to the WPA and approved in writing by the WPA setting out how the various ecological features of interest both within and adjacent to the site will be brought to the attention of the users of these facilities. The details shall include but not be limited to:

(a) The provision of 'out of bounds' markers on the golf course, including a plan detailing the location of such markers;

- (b) The provision of details on the golf scorecards and/or in the clubhouse detailing the ecological features of interest on the site and the need not to disturb these areas;
- (c) The provision of signs on the horse riding trail and at the equestrian centre detailing the need to keep on the trail and off the adjacent Annesley Woodhouse Quarries Site of Special Scientific Interest and other ecological features of interest within the site.

The measures shall be implemented in accordance with the approved details and thereafter maintained to the satisfaction of the WPA.

*Reason: To safeguard areas and features of ecological interest in accordance with Policy W3.23 of the Nottinghamshire and Nottingham Waste Local Plan.*

58. The noise levels associated with the use of the function room in the clubhouse shall not exceed the existing background noise level of 46.0 dB<sub>LA90</sub> (free field) at High Cliff and The Hollies, Park Lane after the addition of the 5dB(A) penalty to reflect tonal, discrete or impact noise as advised by BS4142 between the hours of 19.00 and 02.00. The operator shall, within two weeks of a written request from the WPA, undertake and submit the results of a BS4142 noise survey to assess whether noise arising from the use of the function room exceeds the permitted noise levels. The monitored noise levels are to be 'free field' carried out at a height of 1.2 metres to 1.5 metres above ground level and presented as a L<sub>aeq, 5 mins</sub> value. Where the noise survey results indicate that the permitted noise levels are exceeded the survey shall include further measures, to be submitted to the WPA for its written approval, to be introduced on site to mitigate the noise impact so as to ensure compliance with the noise criterion. Any such measures shall be implemented within 2 weeks of the WPA's written approval.

*Reason: In the interest of residential amenity and to accord with Policy ST1 of the Ashfield Local Plan Review.*

59. In the event that a complaint is received regarding noise from either of the two wind turbines, which the WPA considers may be justified, the operator shall, within one month of a written request from the WPA, undertake and submit to the WPA for its approval in writing a BS4142 noise assessment to assess whether noise arising from the turbines exceeds the daytime criterion of 10dB(A) above the background noise level and the night-time criterion of 5dB(A) above the background noise level inclusive of the 5dB(A) penalty if deemed appropriate by the WPA. The submitted survey shall include further measures to mitigate the noise impact so as to ensure compliance with the noise criteria. The measures shall be implemented in accordance with the approved details.

*Reason: In the interest of residential amenity and to accord with Policy ST1 of the Ashfield Local Plan Review.*

60. The wind turbines hereby permitted shall be for a temporary period only to expire 25 years after the date(s) of their commissioning, written confirmation of which shall be provided to the WPA within one month of such commissioning.

*Reason: These elements of the development hereby permitted are not considered suitable for permanent permission.*

61. No part of the wind turbines hereby permitted shall carry any logo or lettering other than as may be required for health and safety reasons.
- Reason: To ensure the appearance of the development is satisfactory in the interests of the character and appearance of the surrounding area and in the interests of highway safety.*
62. From the commencement of the development, Kirkby Footpath Number 20 shall be maintained in accordance with details previously submitted to and approved in writing by the WPA, in order to provide for safe and easy access along the route of the footpath. The footpath shall be maintained in accordance with the approved details thereafter.
- Reason: In the interests of public rights of way users.*
63. The use of the office buildings, as detailed on 'Drawing Number 11/1843/06 Revision A – Employment Buildings: Proposed Layouts and Elevations' received by the WPA on 24 February 2012' shall be restricted to those uses detailed in Class B1 of The Town and Country Planning (Use Classes) Order 1987 (as amended).
- Reason: To minimise the impact of the development hereby permitted on the Green Belt.*
64. The occupation of the site manager's office and accommodation building, as detailed on 'Drawing Number BG 3/8 – Manager/Security Office and Accommodation' received by the WPA on 24 February 2012, shall be limited to a person solely or mainly working on the site in a role required for the management and security of the site.
- Reason: To provide for suitable accommodation related to a form of development considered appropriate in the Green Belt as defined in the National Planning Policy Framework.*
65. The caravan and camping area, as detailed on Drawing Number BG3/7A received by the WPA on 17 August 2012, shall only be occupied when the caravan and campsite manager is on site.
- Reason: In the interest of residential amenity and to accord with Policy ST1 of the Ashfield Local Plan Review.*
66. Any horse manure and grass cuttings temporarily stored on the site shall be stored on suitably surfaced areas with raised edges in order to prevent any contaminated surface water flowing onto surrounding land. Horse manure and grass cuttings shall be regularly removed from the site.
- Reason: In order to minimise the impact of the development on features of ecological interest.*

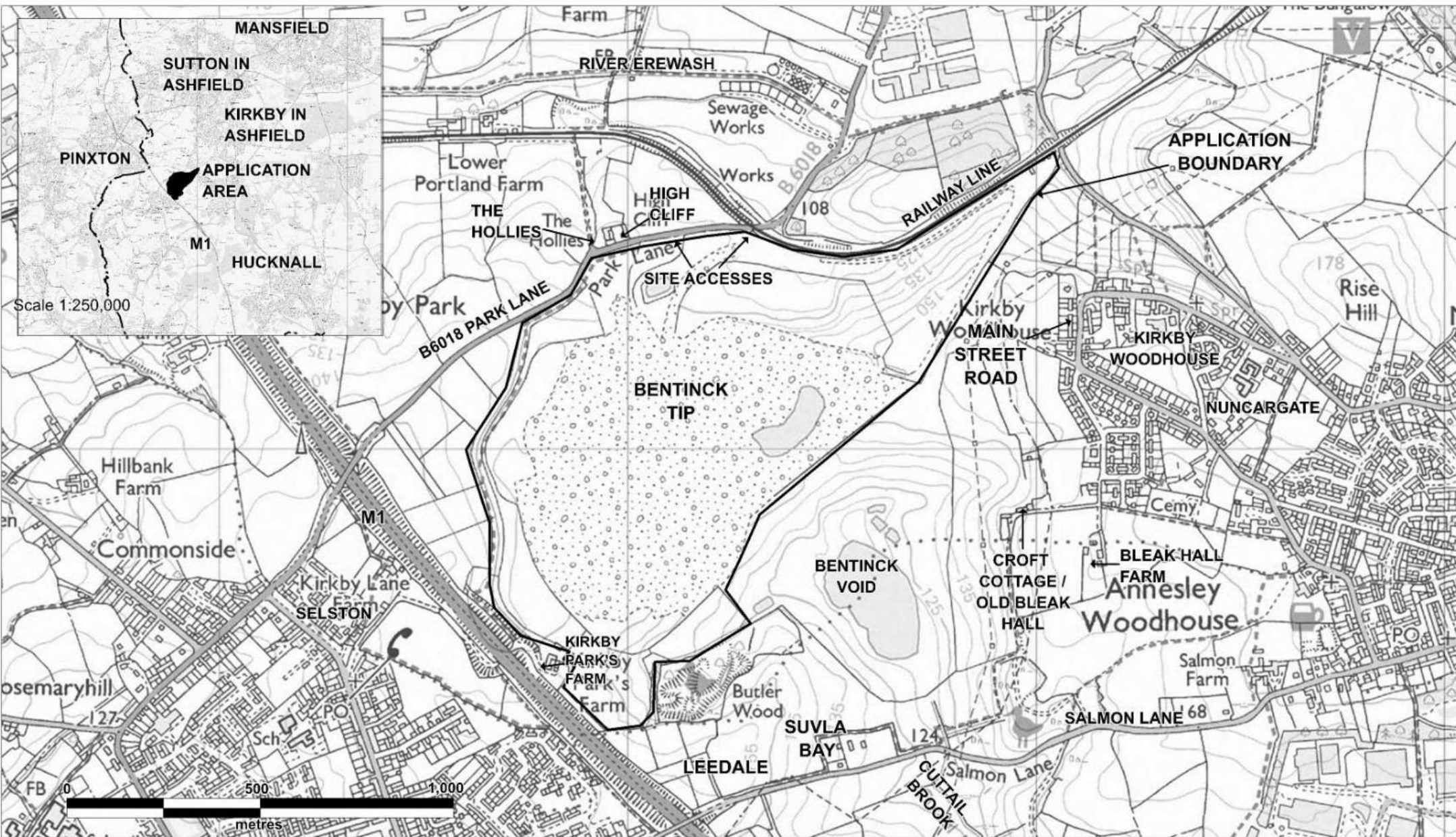
*End of conditions*

### **Informatives/notes to applicants**

1. The requirements contained within the Section 106 Agreement dated 7th March 2013 between Broomco (1997) Ltd (the developer) and Nottinghamshire County

Council, as varied by the Deed of Variation made on 6th February 2017 remain in force - relating to Lorry Routing, an annual dilapidation survey of Park Lane, and an additional five years of aftercare for the areas of ecological interest.

2. The Environment Agency highlights that the existing Environmental Permit (EAWML 104992) states a maximum of 940,500 tonnes of waste can be imported onto the site 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 the planning permission. This permit variation must be applied for and granted before any waste above the 940,500 tonnes limit is accepted on site.
3. Pursuant to condition 18 (site entrance), the County Highways Authority advised a Section 278 highways agreement will be required in order to provide a satisfactory junction onto the public highway once the construction phase has been completed.
4. The use of Ash for the proposed woodland areas should now be avoided due to the continued prevalence of Ash Die back disease - *Hymenoscyphus fraxineus*. The proportions of other tree species should be increased to compensate for the removal of Ash.



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) Bentinck Colliery Tip, Park Lane, Kirkby in Ashfield, Nottinghamshire.

Planning Application No. 4/V/2022/0678

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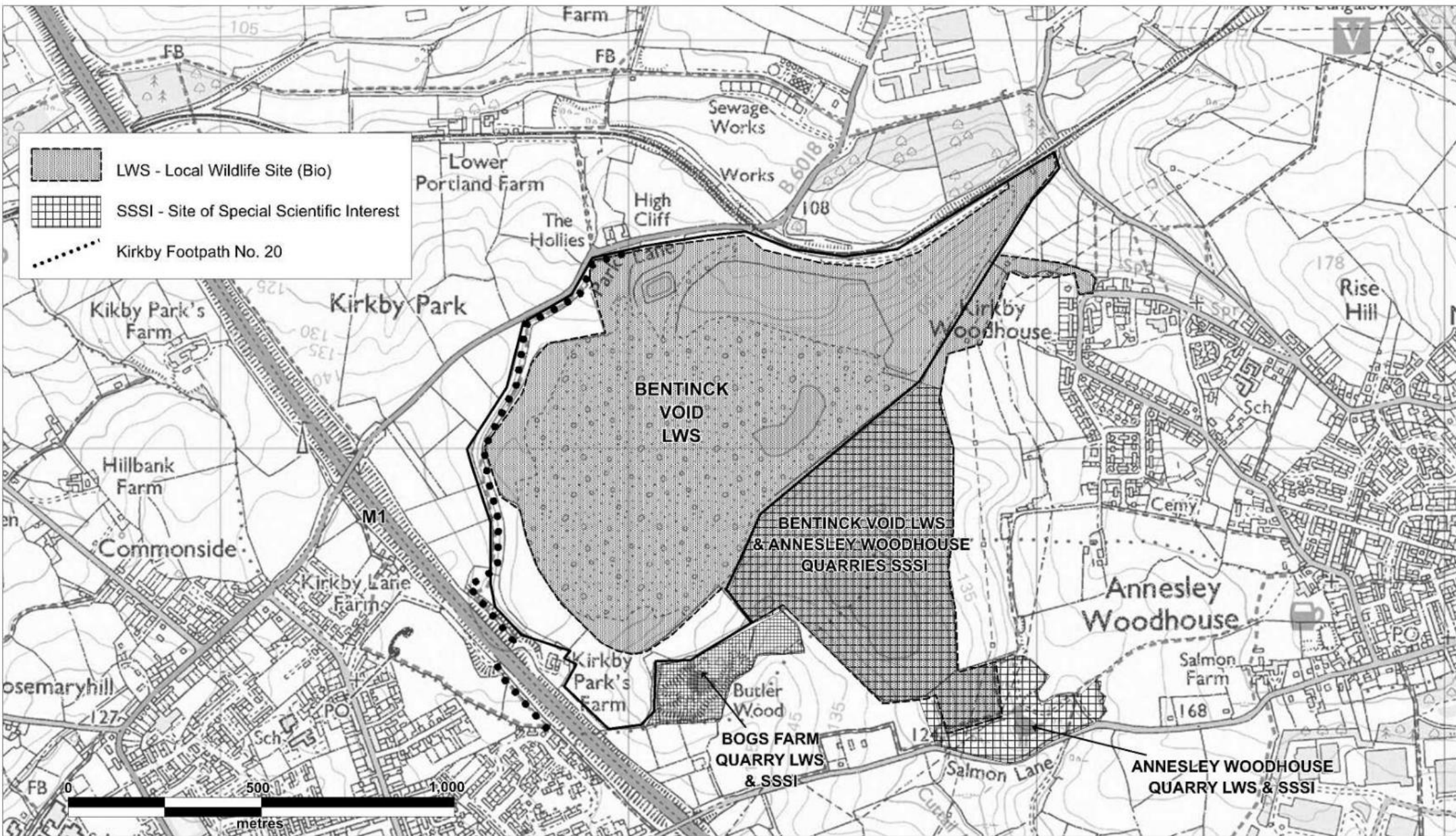


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Date: JAN 2023

**PLAN 1**



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) Bentinck Colliery Tip, Park Lane, Kirkby in Ashfield, Nottinghamshire.

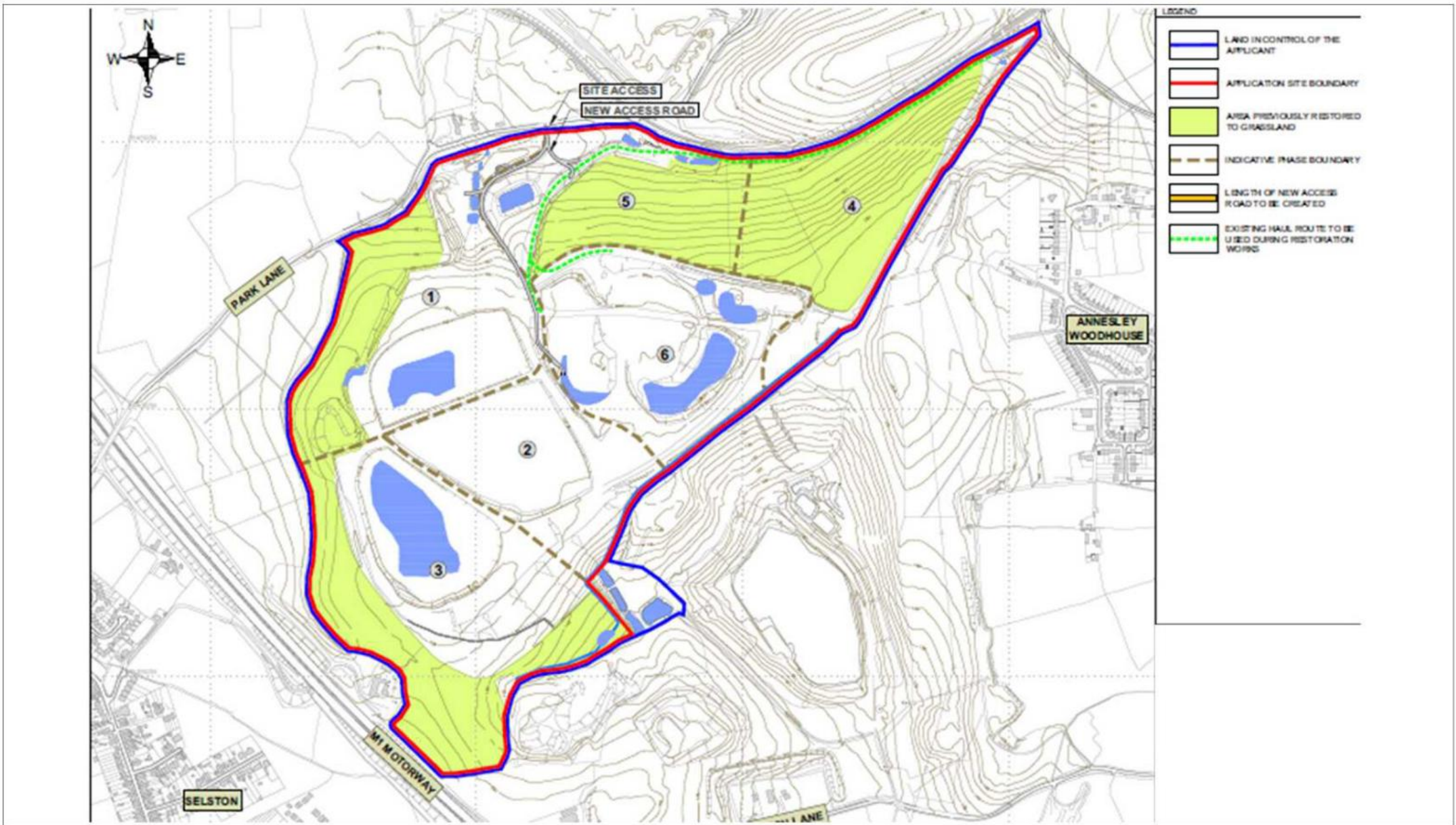
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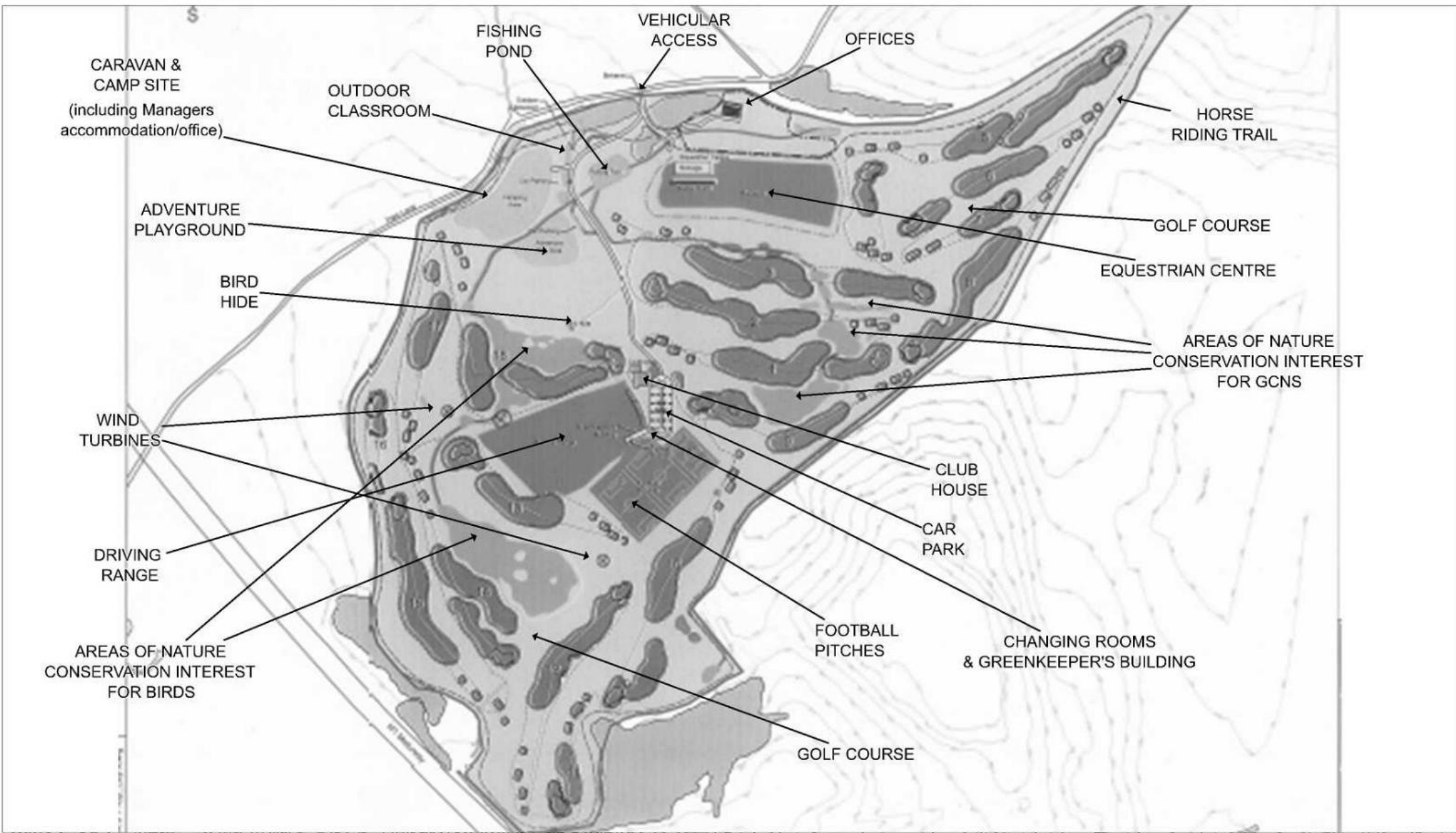
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**17 January 2023**

**Agenda Item 6**

## **REPORT OF INTERIM CORPORATE DIRECTOR (PLACE)**

**APPLICATION REF: 1113**

**PROPOSAL: A DEFINITIVE MAP MODIFICATION ORDER APPLICATION REQUESTING NOTTINGHAMSHIRE COUNTY COUNCIL RECORD A SERIES OF PUBLIC BRIDLEWAYS**

**LOCATION: LAND TO THE NORTH OF MEDEN VALE IN THE PARISHES OF WARSOP, CUCKNEY AND NORTON**

**APPLICANT: MR STEVEN PARKHOUSE ON BEHALF OF NOTTS AREA RAMBLERS**

### **Purpose of Report**

1. To determine four applications from the Notts Area Ramblers seeking to add to the Definitive Map and Statement (DMS) a series of bridleways which are not currently recorded, and to upgrade certain definitive footpaths to bridleways. A map showing the routes in question and other relevant features is shown at Appendix A.
2. The recommendation set out at the end of the report is to make a Modification Order to record bridleways along all the routes applied for. The effect of accepting the recommendation would be to allow officers to move to the next stage of the process of making a Modification Order. This allows for anyone to make an objection to the Order when it is published and if the objections are made and not withdrawn then the case will be referred the Planning Inspectorate. Once referred, an Independent Inspector would either ask for a written exchange of correspondence or ask for a public hearing or inquiry into the Order to be arranged where objectors and supporters would be able to present their evidence in detail to the Inspector. The Inspector would then make a decision on the case based on all the evidence.

### **Summary of Legal Tests**

3. Under Section 53 of the Wildlife and Countryside Act 1981 (WCA81) The Nottinghamshire County Council has a duty to keep the DMS under continuous review and make the necessary legal orders in accordance with the following:
  - a) The expiration of a period of public use from which it can be presumed that a highway has been dedicated. Such a dedication may arise under Section 31 of the Highways Act 1980 (HA80) following a period of 20 years uninterrupted public use, unless there is evidence that the landowner had no intention of dedicating a highway. Alternatively, if no dedication has taken place under HA80 it may be necessary to consider whether dedication has taken place under common law principles. Common law requires consideration of the following four issues: 1) whether the landowner had the capacity to dedicate a highway, 2) whether there was express or implied dedication by the landowners, 3) whether there is acceptance of the highway by the public taking it into use; and 4) whether it can be demonstrated that the landowner had no intention of dedicating public highway rights. Evidence of use by the public 'as of right' may support an inference of dedication and may also show acceptance by the public.
  - b) Where the application seeks to add a route to the DMS, the evidence must show either that the claimed right of way subsists (i.e. there must be clear evidence in respect of the claim and no credible evidence to the contrary (this is known as Test 1)) or it must show that it is reasonable to allege that the claimed right of way subsists (known as Test 2). Test 2 can be considered to be met at law even where the evidence is finely balanced, provided there is no incontrovertible evidence that the claimed route could not subsist. If either of these tests is met a Modification Order should be made proposing to add the routes and inviting any further evidence before the final decision as to whether or not to confirm the Modification Order is made.
  - c) Where the application seeks to upgrade a route shown on the DMS (i.e. from footpath to bridleway), the application must show (on the balance of probabilities) that a highway depicted in the map and statement as a highway of a particular description ought to be shown as a highway of a different description.
  - d) In order for actual use by the public to constitute evidence of a right to such use, the use must be 'as of right'. This means that the use must not be by force, by stealth or with permission. 'Force' is not confined to physical force but could also include circumstances where use is contentious i.e. use in breach of prohibitive signage or repeated verbal requests to desist. Use must not be by stealth but must be 'in the open' and without any form of secrecy. Use cannot be by permission (either when expressly given or implied from the landowner's conduct).
4. When a Modification Order is made and an objection is received, the Council cannot confirm the Order but must instead refer it to the Secretary of State for a decision. In cases involving large amounts of user evidence the appointed

Inspector would normally call for a hearing or public inquiry to be held whereby any conflicting evidence can be tested. Evidence given in person in such forums will be given greater weight than information contained in evidence statements. However, the legal 'trigger' requiring that a Modification Order be made (and thus a call made for any further evidence to be submitted) is only that it is reasonable to allege that a right of way subsists (Test 2 in para 2b above).

## Information

5. **Statutory Declaration 1:** In relation to part of the land over which the routes are claimed, a Statutory Declaration under Section 31(6) of the Highways Act 1980 was lodged with the County Council in February 1997 by the Agricultural Development and Advisory Service (ADAS). Such declarations enable landowners to formally acknowledge any existing public rights of way across their land. In effect, landowners are also therefore indicating that they have no intention of dedicating any routes other than those which are formally acknowledged in the Declaration. However, Crown Departments such as ADAS are not automatically subject to the provisions found in HA80 unless there is an agreement with the Highway Authority under HA80 S.327(2). Although no formal S.327 agreement has been located, submission of the Declaration to the County Council in 1997 by ADAS and acceptance of the same by the County Council could be considered as indicating that an implied agreement took place in this instance. Given that the Declaration did not identify any bridleway rights on the routes being claimed, it should be regarded as a challenge to public use (on the ADAS land), and therefore the application would need to rely on evidence of use prior to 1997. However, the Crown exemption would still apply in respect of claimed public use prior to 1997 and so dedication of highway rights cannot be deemed to have occurred under Section 31. As such, any right of way claim regarding this land would need to rely instead on common law principles.
6. **Statutory Declaration 2:** In September 2012, the Welbeck Estate also deposited a Statutory Declaration on their land. The Declaration did not identify any public bridleways on the routes being claimed. Accordingly, 2012 should be considered as the date when public use was challenged on the Welbeck Estate land. As such, the evidence must show sufficient qualifying public use prior to this date.

## Observations

7. Several routes have been claimed under four separate applications. In turn, the applications are supported by user evidence statements indicating use of a combination of routes. Accordingly, in correlating the user evidence, the information contained in them has been assessed on a section-by-section basis as set out below.
8. **Route 1:** This part of the application seeks the upgrading of an existing definitive footpath to a bridleway based on evidence of actual use by the public. The

definitive legal alignment of this path was established by the Nottinghamshire County Council (Warsop Footpath No.39) Public Path Diversion Order. The aforementioned Order specifies the legal alignment of the footpath as running along the southern and eastern side of the present perimeter fence (Point 1 on Appendix A). However, site inspections indicate the well-worn path as actually being along the northern and western side of the perimeter fencing (i.e. on the opposite side of the fence to the definitive legal line). Given that the intention of the application is to record the route in actual use, and that this line is not recorded on the DMS, upgrading would not be applicable. The technical implications of this will be considered later in this report. Part of the route which is in use is subject to the Welbeck Estate Statutory Declaration (2012) and therefore, for the purposes of calculating a potential 20-year period of public use of Route 1, the relevant period is 1992-2012. A total of 53 evidence statements demonstrate use within the 20-year period of which 31 relate to use on horseback or cycles. Many evidence statements also refer to use in the 1950s-60s. No signs or barriers were observed on the land at the time of the officer's site visit.

9. **Route 2:** A well-used wear line was observed along the claimed route connecting with routes 1 & 3. The land in question is in the ownership of the Welbeck Estate and is therefore subject to the 2012 Statutory Declaration. No signs or barriers were observed on the land at the time of the officer's site visit. A total of 44 evidence statements demonstrate use within the 20-year period prior to 2012 of which 25 relate to use on cycles. Many evidence statements also refer to use in the 1950s-60s.
10. **Routes 3 and 4:** This route consists of a tarmac/concrete path being the legacy of occupation of the land by the Ministry of Defence (MoD) in the mid 1900's. A total of 52/53 (for route 3 and for route 4 respectively) evidence statements demonstrate use within the 20-year period prior to the Welbeck Statutory Declaration (2012), of which 32/31 (respectively) demonstrate use with cycles. Again, many statements refer to use dating back to the 1950s-60s. A cyclist was observed on the western end of the route during the case officer's site visit.
11. There are locked gates currently preventing use either side of the former Welbeck Colliery service road (Point 1 on Appendix A). According to some user evidence statements these gates were locked (preventing public use) sometime between 2005 and 2012. Prior to that, several statements refer to the presence of unlocked wooden gates, and prior to that felled logs with gaps allowing access. Damaged signs were observed at various locations in the adjacent woodland reading "Private Woodland", while Phoenix Airsoft's land (leased from the Welbeck Estate) exhibited signs reading "Private Property – No Public Access Phoenix Wargames in Progress". If taking the earliest date when these gates were said to be locked (2005) as the date when public use was first challenged (as opposed to the lodging of the Declaration), then 51/52 (for route 3 and for route 4 respectively) evidence statements demonstrate use within the 20-year period of

which 32/39 forms (for route 3 and for route 4 respectively) demonstrate use with cycles.

12. **Route 5:** Consists of an access track/woodland path with no physical obstructions. Warning signs have been placed on a tree at the northern end which read "Private Property, No Public Right of Way" and "Phoenix Airsoft-Private Property-No public access. There is also evidence of older signage (though the wording cannot be discerned) which appears to have been vandalised. The route was observed being used by a small group of mothers and children during the site visit (in sight of the aforementioned signs). The ADAS Statutory Declaration was in place on the land in 1997. A total of 41 evidence statements claim use prior to 1997 of which 26 relates to use by cyclists. Many statements refer to use dating back to the 1950s-60s.
13. **Route 6:** This route commences from the end of Hatfield Avenue, Meden Vale (a tarmacked public carriageway highway) and continues along a farm track meeting up with Warsop Footpath No.36. It appears to be well used with no visible warnings signs or notices prohibiting public use. The route is subject to the 1997 ADAS statutory declaration. Accordingly, a total of 59 evidence statements claim use prior to 1997 of which 42 relate to use on cycles. Many statements refer to use dating back to the 1950s-60s. No warnings signs or notices prohibiting public use with cycles was observed at the time of the officer's site visit.
14. **Route 7:** Continuing from Route 6, this farm track is currently recorded on the Definitive Map and Statement as Warsop Footpath No.36. The route is subject to the 1997 ADAS statutory declaration. Accordingly, a total of 27 evidence statements claim use prior to 1997 of which 17 relate to use on cycles. Many statements refer to use dating back to the 1950s-60s.
15. **Route 8:** Is currently recorded as a definitive footpath. Pedestrian and farm gates appear to have been in situ for some years at the Netherfield Lane end. Google street view images indicate that the farm gate has been locked at times with public access being via the pedestrian gate. Two cyclists were observed using the route during the officer's site visit. The route is subject to the 2012 Welbeck Estate Statutory Declaration and therefore (in the absence of any other challenge) the relevant 20-year period of use is 1992 to 2012. Accordingly, 41 Evidence Statements indicate use on cycles and horseback within this period. No signs were observed on the land at the time of the officer's site visit.
16. **Route 9:** Is currently recorded as a definitive footpath. 4 cyclists were observed using the route during the officer's site visit. The route is subject to the 2012 Welbeck Estate Statutory Declaration and therefore (in the absence of any other challenge) the relevant 20-year period is 1992 to 2012. Accordingly, 41 Evidence Statements indicate use with cycles within this period. No signs or barriers were observed on the land at the time of the officer's site visit.

## Consultation

17. A consultation exercise has been carried out with landowners, parish/district councils, utility companies, user groups and other interested parties. Objections

and comments are summarised below. The case officer's response is shown in italics.

18. Objection from the Welbeck Estate:

- (I) The Statutory Declaration submitted on the 5<sup>th</sup> September 2012 challenges use in 2012 at the least.

*In the absence of any known earlier challenge, officers agree that the Declaration challenged public use in 2012.*

- (II) In 2003, a statement was sworn in front of a solicitor by the Estate Head Gamekeeper, Eric Betts in relation to a separate footpath claim, but part of the same area patrol, demonstrates that trespassers have been continually challenged and that signage explaining the land was private was maintained over a period of 30 years.

*Although the statement relates to a separate footpath application, this could be said to demonstrate a general policy of challenging trespass. However, there is 1) no indication on the present evidence that users were challenged on the routes that are the subject of this report; and 2) for signage to be effective, their intention needs to be unambiguous.*

- (III) The depiction of tracks and rides on historic maps, going back over 100 years in some cases, does not mean that these tracks were ever intended to be used for public access or enjoyment, or that the public actually used these routes. Concrete roads and bays in the Presley and Hatfield Plantations formed part of a munitions store for the War Department/Ministry of Defence. This land would have been strictly policed and off-limits to any unauthorised personnel. The fact that the War Department are no longer in occupation does not mean that the landowner's position towards public access in this area has changed in any way; it remains unwanted.

*No documentary map evidence was presented nor has any been discovered showing the existence of tracks coinciding with the public bridleway routes being claimed. Instead, the applications rely upon evidence of user.*

- (IV) There is a clear bias in the evidence gathered by the applicant. A representative of the Estate was not invited to be present when this data was gathered to present an opposing view or alternate set of questions. The questions asked are leading and no supporting evidence has been submitted in respect of some of the answers given [i.e. photographs].

*The Authority's role at this stage is to form a view on the evidence before it as to whether an order should be made; the making of such an order then triggering an opportunity for the gathering of further evidence before a final determination is made as to whether the claimed rights of way exist. The procedure provides for the veracity of the evidence submitted by the applicant and the objectors to be tested and clarified in a public forum such as a local public inquiry.*



- (V) The evidence is incoherent, haphazard and taken over just three months (May to July 2012) and is not representative of the requirement to demonstrate use over a twenty-year time span. The forms appear to relate to some or all of the claimed routes, and it is not clear where trespassers actually went or the frequency of use of certain claimed routes against other claimed routes.

*Again, the veracity of the evidence submitted by the applicant and the objectors would benefit from clarification in a public forum such as a local public inquiry before it can be finally determined as to whether the claimed bridleways exist.*

- (VI) It was not physically possible to access the claimed routes due to a number of locked gates in the subject areas. A number of questionnaires refer to these gates stating that users were not deterred by their presence and that they could get around the side therefore knowingly disobeying the intention to keep unauthorised personnel out of these areas. These gates both challenged the public and demonstrate that the Estate had no intention to dedicate any ways to the public.

*Though the installation of gates is not conclusive evidence of the landowner's lack of intention to dedicate a right of way, the subsequent locking of the gates at Point 1 (Appendix A) did prevent public use and, by such challenge, therefore brought to an end any period of public use.*

- (VII) The Hatfield Plantation has been occupied by a paintball operator, Phoenix Airsoft, who have a duty to the public (paying or otherwise) to keep them safe due to the nature of the war game activities they run. Two evidence forms state they were warned not to use the area for access. The witnesses imply permission was given and that any use on that basis was not as of right and revokable by the proprietor at their discretion.

*Use of these particular routes (Nos. 4 & 5) is claimed to have taken place as early as the 1950 and 1960s. It is possible that a right of way had been established prior to Phoenix Airsoft's occupancy of the land (which commenced around 2010).*

- (VIII) A further test which the application has failed to meet is that access has been physically interrupted over the twenty-year period. The foot and mouth outbreak in 2001 resulted in the formal closure of public paths which will have, as a matter of fact, interrupted any user. Any claim to the contrary would be knowingly breaking the law at the time of the outbreak.

*The Planning Inspectorate has issued guidelines on this particular point (Rights of Way Section Advice Note 15- April 2010) stating "it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an "interruption" under section 31(1).*

- (IX) Signage is currently erected on the land and equally in the past. This [application] demonstrates a willingness to ignore the signage despite our best passive efforts to deter it. The signage had to be placed at height due to previous signs which

were located more at eye level being vandalised, defaced and in some instances destroyed. This is evidence of use by force.

*Again, signs appear to have been present on the Welbeck land during at least some of the period of claimed use and there is evidence of signage being damaged, however, it is not clear whether signage was directed at persons using the path or trespassers within the adjacent woodland. This issue would benefit from clarification in a public forum such as a local public inquiry*

- (X) One evidence form refers to a 'private' notice put in place 'in the last year' [i.e. 2011]. This underlines the landowner's desire to keep out unwanted and unauthorised public access over the claimed routes.

*Signage erected in 2011 would have no legal effect if rights had been acquired previously. It is noted that evidence statements claim use dating as far back as the 1950s.*

- (XI) A significant percentage of the evidence submitted has shown use on foot and therefore does not meet the requirement to justify the request for a bridleway.

*The percentage of use claimed by cyclists is not insignificant.*

19. Objection from Phoenix Airsoft:

- (i) Full planning permission [for a war games business] was obtained from the Mansfield and Bassetlaw District Councils in 2010. The business has been developed and thousands of pounds have been put into it over the years.
- (ii) We have around 600 members and a gate at the entrance which is padlocked and has been padlocked for over a decade. We have signs and fencing around the perimeter and do not encounter 100s of users as claimed in the witness statements.

*Signs and the locking of gates during occupancy of the land by Phoenix Airsoft would have no legal effect on rights if they had been acquired by virtue of use during an earlier period i.e. 1950s to 2010.*

- (iii) This proposal would cause us a big problem as we have war games and events running throughout the whole week and would open a pandora's box with off-road bikers and quad bikers raging through. At the moment we are working with the police to catch and suppress the bikers etc. All this hard work will be a waste of time if the application goes through.

*Whilst regrettable, such issues would be a matter for the police. The only issue that can be considered here is whether or not a right of way exists. Additionally, the claims are for, at their highest, bridleways, which do not carry public rights for 'off-road bikers and quad bikers' and so even if the rights of way for which application has been made were recorded, such vehicular use would be no more lawful than at present.*

- (iv) The area is well known for gay meetings and anti-social behaviour, also it was a dedicated drug haven. The Fire Brigade have been called out many times due to anti-social behaviour. This has stopped due to us taking over the land. We have done a lot of work within the local community and with several companies including: Notts County Council Social Services, Nottinghamshire Police, Derby Community Safety Partnership Youth Offending Services, schools in the area and many more.

*While this point is noted, it is not relevant to whether or not public highway rights may exist.*

- (v) If it was important, why wasn't the application put in decades ago? We do not need another path as we are surrounded with footpaths so why add another and possibly cause our business to close? We have gone through a major Covid19 year and many businesses are struggling and have been closed putting thousands out of work. We could also have to close putting all our staff out of work to add to the disaster.

*While this point is noted, it is not relevant to whether or not public highway rights may exist. Whether one or more of the paths claimed may be unnecessary would be a separate point and would need to be considered separately, should the claimed rights of way be found to exist at law.*

- (vi) The bridle path crosses a major road [i.e. the former colliery access road) used by heavy lorries daily...a bridleway across it would put the public in danger.

*If, following due process, a bridleway was confirmed, structures and signage could be put in place if safety issues were to arise, but it is to be noted that the applications are supported by evidence of the public already making use of the claimed route.*

20. Objection from The Robin Hood Way Association:

- (i) The Robin Hood Way is a long-distance walking route and we wish to see as many footpaths retained on this long-distance trail as possible. We wish to have pleasant quiet enjoyment on as many definitive footpaths without being intimidated by cyclists. Should this order be confirmed, it would result in upgrading at least four definitive footpaths to bridleway status.

*The application routes, if confirmed by due process, would result in the upgrading of three definitive footpaths, two of which form part of the Robin Hood Way long distance footpath. Whether or not the footpaths are to be upgraded must, at law, be determined solely on matters of fact and cannot be determined on desirability.*

- (ii) RHWA was not consulted by the Ramblers Association about the implications of this claim for walkers.

*While this point is noted, it is not relevant to whether or not public highway rights may exist.*

- (iii) It is noted that to have claimed this path the cyclists would have had to link to definitive footpaths to complete the route to an access point. We point out that any user evidence by a cyclist or horse-rider on a definitive footpath should be discounted...they would have been illegally using the footpath.

*It is well established law that a right of way, whether on foot, cycle or horseback can be acquired by means of longstanding use, and that dedication of a highway can be presumed by the inaction of the landowner.*

- (iv) We ask that the practice of claiming bridleways on footpaths by means of cycle and equestrian use is discounted nationally.

*That would be a matter either for Parliament or for The Ramblers' Association / Notts Area Ramblers, depending on the party to whom this point is directed.*

21. Objection from Carol Tideswell (Landowner):

- (i) Opening up a footpath to bridleways causes problems such as off-road vehicles gaining access. We are already experiencing this problem in other areas of Warsop. This is an ongoing police matter because they pose a danger to walkers, ramblers and not to mention the wildlife and landscape also livestock.

*Unauthorised use of a bridleway with motorised vehicles would be a matter for the police. The only issue that can be considered here is whether or not a right of way exists.*

- (ii) The said paths have been used already for years and I can't see it making a difference to those people who use them but to landowners it just causes unmeasurable problems. These bridleways get abused by motocross bikes quads and other off-road vehicles leaving us prone to death of livestock and damage to fields, hedges and also fly tippers and in [anti] social behaviour. It makes it more accessible to drug related crimes. I hope we can resolve the situation to benefit all involved, such as the installation of gates and signage.

*If, the paths have been in use for years as is stated, it is possible that bridleway rights have already been acquired. Again, any unauthorised by motor vehicles is a matter for the police.*

22. Nottinghamshire Footpath Preservation Society:

The Society strongly supports this application by Notts Area Ramblers.

23. Dave Backhouse, Group Coordinator, Sustrans (Walking and Cycling Charity):

- (i) We are very supportive of this application, particularly since it would not only confirm the legality of cycling along the specified trails, but also open up the

opportunity of creating 'circular' rides in the Meden Vale area in conjunction with the nearby National Cycle Network Route 6.

- (ii) Such circuits could also include a northern route via Cuckney BW6, minor roads towards Carburton as far as Corunna Lodge, then Norton BOAT4 back to Hazel Gap. Not quite Rutland Water, but this area has potential to become a mecca for mountain bikers and boost the tourism economy.
- (iii) Sustrans rangers are among the cyclists who have been using these trails for a number of years.

### Other Options Considered

- 24. The report relates to the determination of a definitive map modification order application. The County Council is under a duty to consider the application as submitted and to determine the application based on the facts. Accordingly, no other options have been considered.

### Reason for Recommendation

- 25. **Route 1:** As previously mentioned, the route which appears to be in current use is not the same as Warsop Footpath No.39 and therefore it would not be appropriate to authorise any upgrading on the evidence supplied. However, in respect of the non-definitive route which is currently used, a substantial amount of evidence has been submitted demonstrating use with cycles from which a bridleway can be presumed to have been dedicated. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a right of way on the basis that the evidence shows that a bridleway subsists (per Test 1 in para 2b above) with use having taken place 'as of right' on cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012. No evidence has been found to suggest that the landowner took sufficient steps to demonstrate that he had no intention of dedicating a public right of way.
- 26. **Route 2:** Other than stating that there was a general policy of challenging public use (i.e. through gamekeeper patrols), there is no clear evidence of sufficient action taken on behalf of the landowner (The Welbeck Estate) to demonstrate a negative intention of dedicating a highway. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that it is reasonable to allege (per Test 2 in para 2b above) that a bridleway subsists and which can be presumed to have been dedicated by virtue of use having taken place 'as of right' on cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012.

27. **Route 3 and Route 4:** The evidence forms allege a period of at least 20 years use, with cycles, as of right and without interruption prior to the locking of the gates on the Welbeck Colliery access road (2005). In contrast, the landowner states that signs have been present on the land i.e. “Private Woodlands Keep Out” and “Private Property – No Public right of Way” and that the public have been challenged by a gamekeeper i.e. there is a clear conflict of evidence which requires testing in a public forum such as a public inquiry. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis of a reasonable allegation of dedication of public bridleway rights (per Test 2 in para 2b above) with use having taken place ‘as of right’ on cycles for a period of at least 20 years prior to the earliest known challenge in 2005.
28. **Route 5:** This route is subject to the 1997 ADAS Statutory Declaration. Furthermore, with ADAS being a Crown Department at the time of the alleged use, the claim must be evaluated on Common Law principles. To summarise: 1) The evidence forms indicate sufficient use with cycles and, 2) ADAS were legally capable of dedicating a bridleway and, 3) that the route appears to have been accepted and used by the public, over many years. No contemporaneous evidence has been found to indicate that the landowner either lacked the capacity to dedicate or had no intention of dedicating a public right of way. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that a bridleway can be presumed to have been dedicated at common law (para 2a), use having taken place ‘as of right’ on cycles over many years prior to the 1997 Declaration.
29. **Route 6:** Again, this part of the claim will rely on Common Law principles prior to the lodging of the 1997 declaration. To summarise: 1) The evidence forms indicate use with cycles and, 2) ADAS were legally capable of dedicating a bridleway and, 3) the route appears to have been accepted and used by the public, over many years. No contemporaneous evidence has been found to indicate that the landowner either lacked the capacity to dedicate or had no intention of dedicating a public right of way. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that a bridleway can be presumed to have been dedicated at common law (para 2a), use having taken place ‘as of right’ on cycles over many years prior to the 1997 Declaration.
30. **Route 7:** Again, this route is subject to the 1997 ADAS Statutory Declaration and being a Crown Department, the claim will rely on Common Law principles. To summarise: 1) The evidence forms indicate use with cycles and, 2) ADAS were legally capable of dedicating a bridleway and, 3) the route appears to have been

accepted and used by the public, over many years. No contemporaneous evidence has been found to indicate that the landowner either lacked the capacity to dedicate or had no intention of dedicating a public right of way. Accordingly, the County Council should exercise its powers to make an Order, the effect of which if ultimately confirmed, would be to record a bridleway on the basis that a footpath depicted in the map and statement ought to be shown as a bridleway (para 2c). This follows a period of use which has given rise to a presumption of dedication at common law (para 2a), use having taken place 'as of right' on cycles over many years prior to the 1997 declaration.

31. **Route 8:** Other than stating that there was a general policy of challenging public use (i.e. through gamekeeper patrols), there is no clear evidence of sufficient action taken on behalf of the landowner (The Welbeck Estate) to demonstrate a negative intention of dedicating a highway. Accordingly, the County Council should exercise its powers (per para 2c above) to make an Order for the reason that, on the balance of probabilities, a highway depicted in the map and statement as a public footpath, ought to instead be shown as a public bridleway, use having taken place 'as of right' with cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012.
  
32. **Route 9:** Other than stating that there was a general policy of challenging public use (i.e. through gamekeeper patrols), there is no clear evidence of sufficient action taken on behalf of the landowner (The Welbeck Estate) to demonstrate a negative intention of dedicating a highway. Accordingly, the County Council should exercise its powers (per para 2c above) to make an Order for the reason that, on the balance of probabilities, a highway depicted in the map and statement as a public footpath, ought to be shown as a public bridleway, use having taken place 'as of right' with cycles for a period of at least 20 years prior to the lodging of the Welbeck Statutory Declaration in 2012.

### **Statutory and Policy Implications**

33. 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, safeguarding of children and adults at risk, service users, smarter working, 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.

### **Financial Implications**

34. While there will be costs incurred in signing the proposed routes, should the application to add these routes be successful, the Authority is under a duty to a) record the existence of highways; and b) in the case of minor highways such as those which are the subject of this report, to signpost and waymark those in order

that the public can find and use the routes reducing the risk of inadvertent trespass because a route is unclear.

## **RECOMMENDATIONS**

35. It is recommended that a Definitive Map Modification Order is made, the effect of which if confirmed, would be to record all of the following on the Definitive Map and Statement:

- Add Route 1 as a bridleway on the basis that the route subsists (per Test 1 para 2b)
- Add Route 2 as a bridleway on the basis that it is reasonable to allege that the route subsists (per Test 2 para 2b)
- Add Route 3 as a bridleway on the basis that it is reasonable to allege that the route subsists (per Test 2 para 2b)
- Add Route 4 as a bridleway on the basis that it is reasonable to allege that the route subsists (per Test 2 para 2b)
- Add Route 5 as a bridleway on the basis that, on the balance of probabilities, it can be presumed to have been dedicated at common law (per para 2a).
- Add Route 6 as a bridleway on the basis that, on the balance of probabilities, it can be presumed to have been dedicated at common law (per para 2a).
- Record Route 7 as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights can be presumed to have been dedicated at common law (per para 2a).
- Record Route 8 as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights subsist.
- Record Route 9 as a bridleway instead of a footpath on the basis that, on the balance of probabilities, bridleway rights subsist.

**DEREK HIGTON**

**Interim Corporate Director (Place)**

**Constitutional Comments**



36. 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.

[JL 05/01/23]

### **Financial Comments**

37. The contents of this report have been duly noted; there are no direct financial implications arising initially and any subsequent costs would be contained within the existing Rights of Way revenue budget.

[DJK 04.01.2023]

### **Background Papers Available for Inspection**

The application file is available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

### **Electoral Division(s) and Member(s) Affected**

Warsop Division                      Cllr Bethan Eddy

Worksop South Division          Cllr Nigel Turner

Report Author/Case Officer

Stephen Tipping  
0115 993 4381








For any enquiries about this report, please contact the report author.



APPENDIX A  
DEFINITIVE MAP MODIFICATION ORDER  
APPLICATION IN WARSOP (MEDEN VALE),  
CUCKNEY AND NORTON

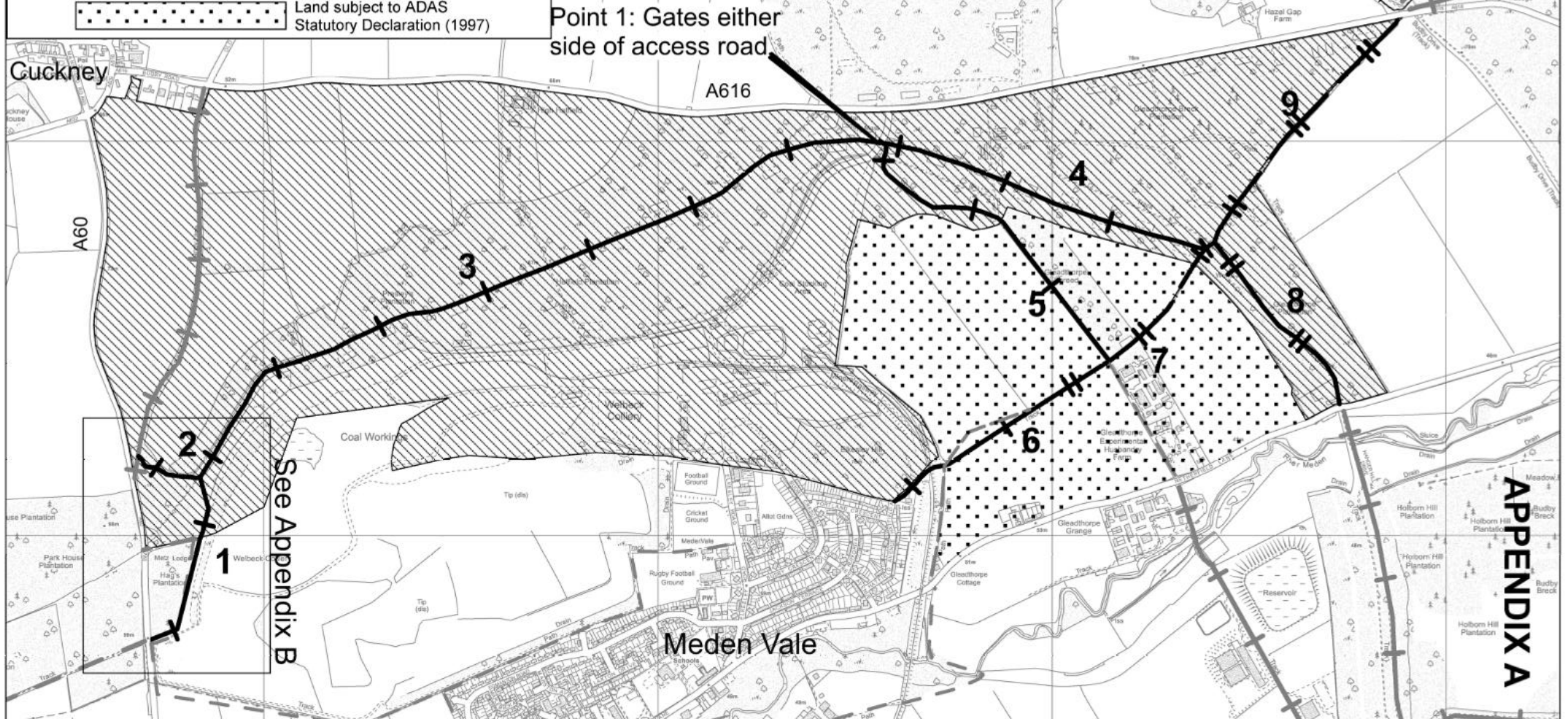


**KEY:**

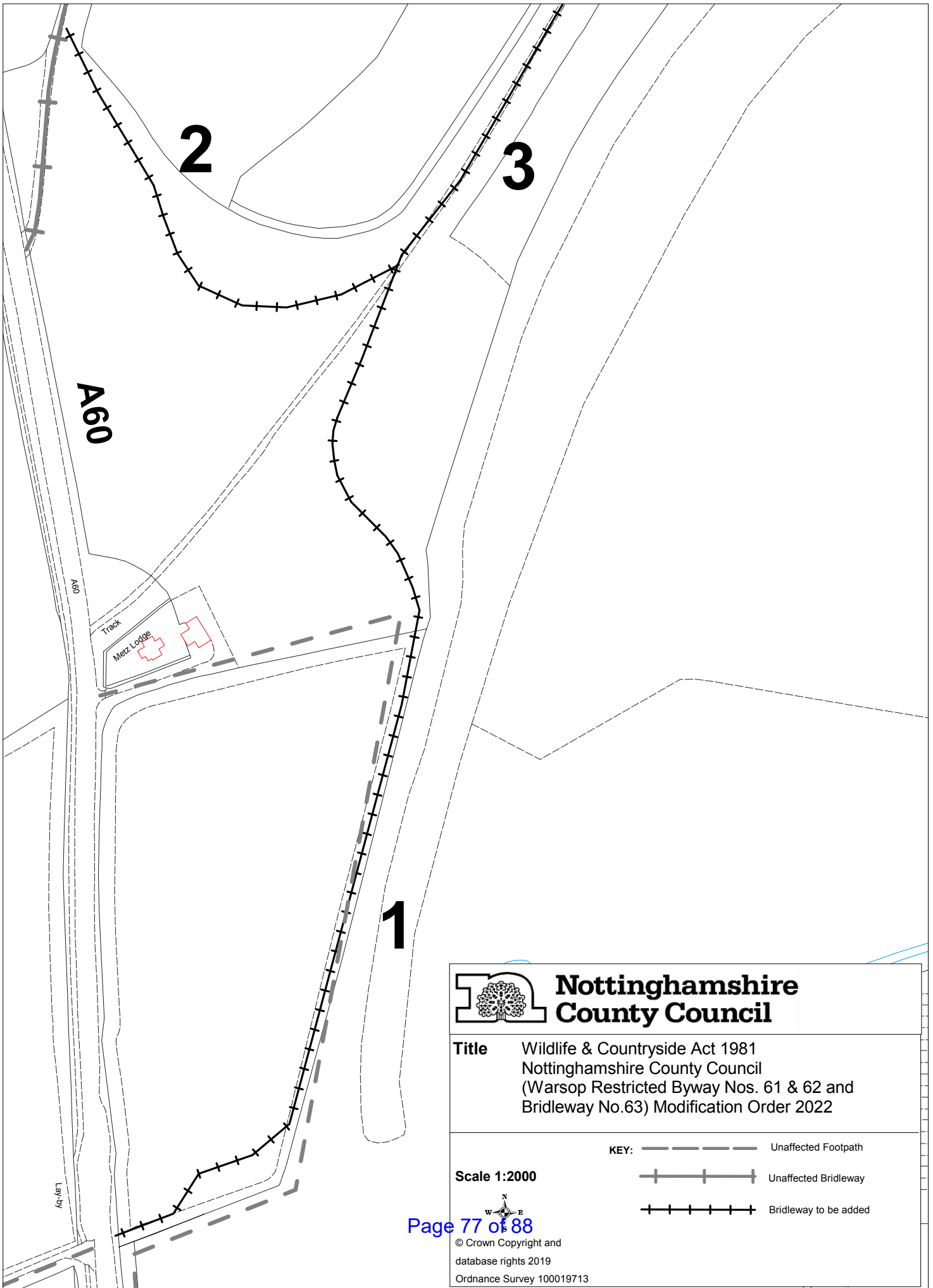
	Unaffected Footpath
	Unaffected Bridleway
	Unaffected Restricted Byway
	Bridleway to be added
	Upgrade Footpath to Bridleway
	Land subject to Welbeck Estate Statutory Declaration (2012)
	Land subject to ADAS Statutory Declaration (1997)


Scale 1:14000 at A4

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 **Nottinghamshire  
County Council**

**Title** Wildlife & Countryside Act 1981  
Nottinghamshire County Council  
(Warsop Restricted Byway Nos. 61 & 62 and  
Bridleway No.63) Modification Order 2022

**Scale 1:2000**



**KEY:**  Unaffected Footpath  
 Unaffected Bridleway  
 Bridleway to be added

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17<sup>th</sup> January 2022

Agenda Item 7

## **REPORT OF CORPORATE DIRECTOR - PLACE**

### **DEVELOPMENT MANAGEMENT PROGRESS REPORT**

#### **Purpose of the report**

1. To report on planning applications received by the Development Management Team between 25<sup>th</sup> November 2022 – 16<sup>th</sup> December 2022, to confirm the decisions made on planning applications since the last report to Members on 13<sup>th</sup> December 2022, and to detail applications likely to come before Committee in the coming months.

#### **Background**

2. Appendix A highlights applications received since the last Committee meeting, and those determined in the same period. Appendix B sets out the Committee's work programme for forthcoming meetings of Planning and Rights of Way Committee and Members are asked to give consideration to the need for any site visits they consider would be beneficial on any application scheduled to be reported to committee in the near future.

#### **Statutory and Policy Implications**

5. 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.
6. The relevant issues arising out of consideration of the Human Rights Act have been assessed in accordance with the Council's adopted protocol. Rights under Article 8 and Article 1 of the First Protocol are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

## **RECOMMENDATIONS**

7. That Committee considers whether there are any actions they require in relation to the contents of the report.

**DEREK HIGTON**

**Interim Corporate Director - Place**

### **Constitutional Comments – (JL 22/12/2022)**

Planning and Rights of Way Committee is the appropriate body to consider the contents of this report.

### **Financial Comments – (CSB 05/01/2023)**

There are no specific financial implications arising directly from the report.

### **Background Papers Available for Inspection**

None

### **Electoral Division(s) and Member(s) Affected**

All

**For any enquiries about this report please contact:**

Report Author / Case Officer  
Rebecca Kirkland  
0115 9932584



**Planning Applications Received and Determined**  
**From 25<sup>th</sup> November 2022 – 16<sup>th</sup> December 2022**

<b>Division</b>	<b>Member</b>	<b>Received</b>	<b>Determined</b>
<b>BASSETLAW</b>			
Misterton	Cllr Tracey Taylor		Temporary operations for 10 years for Soil Treatment Facility including Asbestos Picking Operations at Daneshill Landfill Site. REFUSED on 12/12/2022.
<b>MANSFIELD – NONE</b>			
<b>NEWARK &amp; SHERWOOD – NONE</b>			
<b>ASHFIELD</b>			
Hucknall North	Cllr John Wilmott		Variation of Condition 3 (to remove the development of a ditch from the application plans and instead include the new drainage and swale details),  Condition 8 (to permit planting of the hedgerow to a revised timescale following electrical works), and  Condition 9 (to permit planting of trees to a revised timescale following electrical works) of planning permission 7/2019/1000NCC and 4/V/2019/0680  At Top Wighay Farm. GRANTED on 07/12/2022.
<b>BROXTOWE – NONE</b>			

<b>Division</b>	<b>Member</b>	<b>Received</b>	<b>Determined</b>
<b>GEDLING</b>			
Hucknall West	Cllr David Shaw/Cllr Chris Barnfather		Variation of Condition 3 (to remove the development of a ditch from the application plans and instead include the new drainage and swale details),  Condition 8 (to permit planting of the hedgerow to a revised timescale following electrical works), and  Condition 9 (to permit planting of trees to a revised timescale following electrical works) of planning permission 7/2019/1000NCC and 4/V/2019/0680  At Top Wighay Farm. GRANTED on 07/12/2022.
<b>RUSHCLIFFE</b>			
Keyworth	Cllr John Cottee		Retention of Replacement Boundary Concrete Panel Wall at Chris Allsop Metals Limited. GRANTED on 29/11/2022.
Leake and Ruddington	Cllr Matt Barney/Cllr Reg Adair		Installation of welfare unit at Bunny Materials Recycling Facility. GRANTED on 30/11/2022.
Keyworth	Cllr John Cottee		Retention of Relocated Offices and Visitor and Staff Car Parking at Chris Allsop Metals Limited. GRANTED on 29/11/2022.





## Schedule of future planning applications to be reported to Planning and Rights of Way Committee

(Please note: The committee dates identified are for guidance only. A final decision regarding the committee date is not made until shortly before the agenda is published).

Target Committee	Planning App No.	Location	Development	Current Progress
28 <sup>th</sup> February 2023	FR3/4485	Outwood Academy Portland, Netherton Road, Worksop	Construction of three 2-storey extensions to northern wings of the Outwood Academy Portland, single storey extension to both the existing dining room and kitchen, additional hardstanding and associated site landscape works. Additional cycle bays, cycle lockers, electric vehicle charging points and additional electric vehicle infrastructure.	Progressing through consultation.
28 <sup>th</sup> February 2023	3/22/01790/CMA	Ness Farm and Cromwell Quarry, The Great North Road, Cromwell, Nottinghamshire, NG23 6JE	Proposed southern extension to the quarry for the extraction of approximately 550,000 tonnes of sand and gravel with restoration to agriculture and nature conservation	The planning application consultation responses are currently being received and assessed.
28 <sup>th</sup> February 2023	3/22/01788/CMA	Cromwell Quarry, The Great North Road, Cromwell, Nottinghamshire, NG23 6JE	To allow for amendments to the working scheme and restoration plan, to facilitate working a southern extension at Ness Farm	The planning application consultation responses are currently being received and assessed.
28 <sup>th</sup> February 2023	3/22/01787/CMA	Cromwell Quarry, The Great North Road, Cromwell, Nottinghamshire, NG23 6JE	To allow an update to the method of working plans and the retention and use of the plant site, access, haul road and silt lagoons in order to work a proposed extension at Ness Farm	The planning application consultation responses are currently being received and assessed.
18 <sup>th</sup> April 2023	1/22/00867/CDM	Misson Quarry, Bawtry Road, Misson	Proposed western extension to existing Misson Grey Sand Quarry incorporating modifications to previously approved restoration schemes	A number of ecological matters have been raised which will require the submission of further information and subsequent re-consultation.

			referenced 1/15/01574/CDM and 1/32/11/00020	
18 <sup>th</sup> April 2023	1/22/00865/CDM	Misson Quarry, Bawtry Road, Misson	The application seeks approval to amend the approved restoration scheme that relates to approval 1/32/11/00020. The amended scheme will allow the implementation of the proposed western extension	The implementation of this planning application is linked to 3/22/00059/CMM for the western extension of the quarry and therefore will be determined at the same time as the proposed quarry extension development.
18 <sup>th</sup> April 2023	1/22/00864/CDM	Misson Quarry, Bawtry Road, Misson	The application seeks approval to amend the approved restoration scheme that relates to approval 1/15/01574/CDM. The amended scheme will allow the implementation of the proposed western extension.	The implementation of this planning application is linked to 3/22/00059/CMM for the western extension of the quarry and therefore will be determined at the same time as the proposed quarry extension development.
18 <sup>th</sup> April 2023	4/V/2022/0643	Parts Emporium Ltd, Sidings Road, Kirkby in Ashfield, Nottinghamshire, NG17 7JZ	Part retrospective change of use of land and buildings for the acceptance, storage and treatment of end-of-life vehicles including ancillary storage of salvaged parts	Further ground remediation and noise information has been received and is currently out for re-consultation.
18 <sup>th</sup> April 2023	3/22/00059/CMM	Land south of Church Street, Southwell, Nottinghamshire, NG25 0HG	Flood alleviation works including construction of an earth bund, flow control structure, and related ground works, landscape planting, boundary works including fencing, and ancillary operations.	Revisions to scheme have been requested in relation to preparation and submission of additional flood risk assessments, maintaining pedestrian access over the flood defences, and further advice being sought on detailed heritage considerations, with further re-consultation needed once received.

**Planning Applications currently being processed by the County Council which are not currently targeted to a specific meeting of the Planning and Rights of Way Committee.**

Planning Application: 7/2022/0752NCC  
Location: Calverton (Burntstump) Quarry, Ollerton Road, Arnold, NG5 8PR  
Proposal: Variation of conditions 7, 8 and 50 of permission 7/2005/0263 so to extend the time to work the remaining mineral reserves until 7 Jan 2042 with restoration by 7 Jan 2043

Current Progress: The applicant has been requested to make modifications to the restoration scheme and also submit updated biodiversity calculations. Report to be brought to committee once this supplementary information has been received and consulted upon.

Planning Application: 7/2022/0751NCC  
Location: Calverton (Burntstump) Quarry, Ollerton Road, Arnold, NG5 8PR  
Proposal: Variation of condition 2 of permission 7/2003/1323 to retain the weighbridge, associated buildings and soil mound for the proposed duration of mineral extraction operations to 7 Jan 2042  
Current Progress: The determination of this planning application is linked to 7/2022/0752/NCC (above) and will be determined at the same planning committee.

Planning Application: 8/22/01279/CMA  
Location: John Brookes Sawmill, off the A46, Nr Widmerpool. NG12 5PS  
Proposal: Southern extension to the waste wood and green waste storage yard (part retrospective)  
Current Progress: Drainage, surfacing and the magnitude of dust emissions from the extended operational site are issues arising and have previously been raised with the agent and have now been raised directly with the applicant since the agent is no longer acting.

Planning Application: 3/19/00100/CMM  
Location: Cromwell North Quarry, Land Between Carlton on Trent and Cromwell, Newark  
Proposal: Proposed extraction of 1.8 million tonnes of sand and gravel together with the erection of mineral processing plant and associated ancillary infrastructure. the provision of a new access, and the progressive restoration of the site to nature conservation over a period of 9 years.  
Current Progress: A request for the submission of supplementary environmental information was made under Reg. 25 of the EIA Regs in May 2019. This request for information covered air quality, transport, access, quarry dewatering, floodlighting, landscaping, ecology, noise, protection of River Trent, contaminated land and archaeology. The planning application raises key planning issues in respect of need and mineral supply within Nottingham. The applicant initially delayed their response to the Reg 25 request to allow decisions to be made regarding site allocations as part of the review/examination of the Replacement Minerals Local Plan. The Cromwell North site has not been allocated as part of this process. Officers have recently met with the applicant who has confirmed that they are now in the process of compiling the additional information that has been requested with a view to submitting this information over the next couple of months and progressing the planning application for determination.

Planning Application: 3/20/01244/FULR3N  
Location: British Sugar Corporation Ltd Sports Ground, Great North Road, Newark On Trent, NG24 1DL  
Proposal: Change of use from former sports field to land to be used for conditioning (drying by windrowing) of topsoil material recovered from sugar beet delivered and excavated from soil settlement lagoons onsite, and engineering works to construct an internal access route to serve the soil conditioning area and excavate a flood storage compensation area.

Current Progress:

A supplementary flood risk assessment has been requested from the applicant. British Sugar are currently considering the scope of information required to provide their flood risk response.