



**PEEL ENVIRONMENTAL  
MANAGEMENT (UK) LTD  
AND BILSTHORPE WASTE  
LTD**

# **BILSTHORPE ENERGY CENTRE**

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**PUBLIC INQUIRY UNDER SECTION 77 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990 (AS AMENDED) INTO THE  
PROPOSED DEVELOPMENT OF AN ENERGY FROM WASTE  
FACILITY ON LAND AT BILSTHORPE BUSINESS PARK,  
BILSTHORPE, NOTTINGHAMSHIRE**

**PINS REFERENCE: APP/L3055/V/14/3007886  
LPA REFERENCE: ES/2950**

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**STATEMENT OF COMMON GROUND 1 - SUPPLEMENT**

**SEPTEMBER 2015**

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**1.0 DECLARATION OF AGREEMENT**

- 1.1 This Statement of Common Ground relates to the Public Inquiry (convened under Section 77 of the Town and Country Planning Act 1990) arising from the Secretary of State's decision to call-in the planning application for the Bilsthorpe Energy Centre (Application Reference No: ES/2950: & PINS Reference No: APP/L3055/V/14/3007886).
- 1.2 It has been prepared in accordance with the requirements of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 1624) (as amended) and has been produced jointly by Nottinghamshire County Council (the Waste Planning Authority) and Peel Environmental Management (UK) Ltd. and Bilsthorpe Waste Ltd. (the Applicant).
- 1.3 We hereby state that this document has been produced jointly by Nottinghamshire County Council and Peel Environmental Management (UK) Ltd / Bilsthorpe Waste Ltd. Unless otherwise explicitly identified, the matters set out within the document are agreed by all parties.

Signed: *M. R. Hanlin* ..... Date: *1<sup>st</sup> October 2015*  
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Position: *Planning Applications Senior Practitioner*  
On behalf of Nottinghamshire County Council

Signed: *M. Pollard* ..... Date: *01 October 2015*  
Name: *MARTIN POLLARD* .....  
Position: *Planning Agent* .....  
On behalf of Peel Environmental Management (UK) Ltd. and Bilsthorpe Waste Ltd.

## 2.0 PLANNING HISTORY AND RESTORATION POSITION – SUPPLEMENTARY STATEMENT

### *Introduction*

2.1 UKWIN has submitted to the Planning Inspectorate a document titled 'Supplementary Representation on Restoration Plan' which is dated 10 June 2015. This makes a number of assertions to the effect that the BEC Application Site:

- Should not be classified as 'previously developed land' in accordance with the definition in the NPPF, as it is a minerals site subject to a restoration condition.
- Largely falls outside an area identified for employment development within the relevant Bilsthorpe Colliery restoration plan.

2.2 In making these assertions, UKWIN draws on references made by the Applicant in the original BEC Planning Statement that it acknowledged the Application Site was not 'previously developed land'. The Applicant has made it clear in Statement of Common Ground 1 that it now agrees with the County Council that the Application Site is in fact 'previously developed land'.

2.3 It is acknowledged that the planning history in relation to Bilsthorpe Colliery and its restoration is complex. As a consequence, and following a detailed review of historic planning documents, this Supplementary Statement has been produced to support the position set out in Statement of Common Ground 1.

### *Factual Background*

2.4 Mining operations commenced at the Site in 1920's, and were carried out pursuant to historical planning consents. On 24 May 1991, Nottinghamshire County Council (**"the Council"**) granted planning permission to amend the previously approved restoration contours relating to the disposal of colliery waste (reference 3/62/91/0091) (**"the 1991 Permission"**) (Appendix A). The 1991 Permission included various conditions relating to restoration and aftercare, condition 27 of which required that an updated restoration scheme be

submitted if the colliery closed for a period in excess of 6 months prior to the completion of the approved tipping scheme.

- 2.5 It is important to understand that there are two separate restoration schemes at Bilsthorpe. The first relates to the larger area affected by mining, specifically the disposal of colliery waste. This is referred to as the “**Spoil Heap Restoration Scheme**”. Siting broadly centrally within the Spoil Heap Restoration Scheme is the Pit Head area which is subject to its own “**Pit Head Restoration Scheme**”. The BEC Application Site sits within the Pit Head Restoration Scheme area.
- 2.6 By 1995, it was expected that the Colliery would have a relatively limited life, and the previously approved Spoil Heap Restoration Scheme was considered to be unachievable. Work was therefore undertaken to prepare a revised Spoil Heap Restoration Scheme, which would be submitted and approved pursuant to the conditions attached to the 1991 Permission. At the same time, a separate restoration scheme was prepared in relation to the Pit Head area pursuant to Class A, Part 20 of the Town and Country Planning (General Permitted Development) Order 1995 (“**the GDPO**”).
- 2.7 Correspondence sent by the Council to RJB Mining (UK) Limited (the predecessor to UK Coal) (“**RJB**”) dated 21 September 1995 (Appendix B) indicates the draft restoration submission envisaged that part of the Pit Head area of the Site be redeveloped for employment use. An area of 7ha was initially proposed as suitable for such purposes and thereafter was referred to as “**the Development Area**”.
- 2.8 Following discussions with the Council, a revised Pit Head Restoration Scheme was submitted to the Council in March 1996 (see Appendix C). This comprised the Pit Head Restoration Scheme document (ref: 2007.r.02 dated February 1996) and a supporting plan (drawing reference 2007.6.Rev.B) (“**the 1996 Plan**”). This plan is the drawing that UKWIN has included and referred to in their Supplementary Representation on Restoration Plan. A separate Spoil Heap Restoration Scheme had previously been submitted to the Council in February 1996.

- 2.9 Paragraph 3.1 of the Pit Head Restoration Proposals document acknowledges that:  
*“the proposed development area shown on the plan measures some 7 hectares, but could be altered to suit particular development requirements”.*
- 2.10 Paragraph 3.4 further confirmed that:  
*“should a development scheme not be agreed within the 5 year period following mine abandonment, the development area would be returned to green end use described in section 5”.*
- 2.11 The Pit Head Restoration Scheme was approved by the Council on 12 September 1996 (see Appendix D) subject to the conditions that the scheme be carried out within 24 months from the date that mining activities permanently cease, with the exception of the Development Area shown on the 1996 Plan, *“where interim restoration shall take place in accordance with the details set out in chapter 3 of your scheme, and should no development take place on this area within 5 years of the closure of the mine, the final restoration proposals in that Chapter shall be implemented forthwith”.*
- 2.12 Bilsthorpe Colliery permanently ceased production in March 1997. In September 1997, a revised Spoil Heap Restoration Scheme (drawing reference 2007.1 Rev.E dated August 1997) (**“the August 1997 Revision E Plan”**) was submitted in respect of the Spoil Heap area as the final achievable landform could now be determined (see Appendix E). This revised plan was approved by the Council in April 1998 (see Appendix F). On this plan, the central Pit Head area was identified as the ‘Mine’ (**“Mine Area”**).
- 2.13 On the August 1997 Revision E Plan, the interface between the Spoil Heap Restoration Scheme and the Pit Head Restoration Scheme remained flexible. This is evidenced by the fact that the parts of the Spoil Heap area immediately surrounding the central Pit Head area (Mine Area) are notated with the number 8. Reference to the drawing key shows these areas as being subject to *“proposals for long term development and may change”*. In approving this restoration scheme the Council confirmed: *“The approval is given for the purposes of condition 27 of the planning permission dated 24<sup>th</sup> May 1991 and*

*supersedes all previously approved restoration schemes under condition 15 of that permission”.*

- 2.14 By late 1999, 2 years after the colliery closure, the Spoil Heap Restoration Scheme was well advanced. However, the Pit Head Restoration Scheme had not substantively progressed and the only restoration related activities that were carried out related to the clearance of the Pit Head buildings (required by Section 2 of the Pit Head Restoration Scheme). No works were carried out in relation to the restoration of the underlying ground. This is due to RJB (which became UK Coal in 2001) continuing to formulate redevelopment proposals for the Pit Head area. This included a successful funding request to the East Midlands Development Agency. These efforts continued through until 2002.
- 2.15 Those parts of the Pit Head Restoration Scheme, outside of the Development Area, which should have been restored within 24 months from the date that mining activities permanently ceased were never restored. However, the Council never took any enforcement action. This appears to be due to RJB's ongoing work to firm up development proposals for the Pit Head area as a whole.
- 2.16 By March 2002, development had still not commenced in the Pit Head area and neither the Development Area, nor the remaining surrounding parts of the Pit Head as illustrated on the 1996 Plan for the Pit Head Restoration Scheme had been restored. At this point in time the 5 year restoration condition attached to the Development Area was triggered.
- 2.17 Accordingly, the Council (Principal Enforcement Officer) contacted UK Coal through correspondence dated 30 April 2002 (Appendix G) to request that the Pit Head Restoration Scheme be carried out given that 5 years had expired since the Colliery's closure and that no development had commenced within the Pit Head area. It is evident that at this time the Council were not differentiating between those parts of the Pit Head defined as the Proposed Development Area and those outside of it.
- 2.18 UK Coal responded to this letter on 3 May 2002 (see Appendix H) stating that they envisaged submitting a planning application to Newark and Sherwood

District Council for the redevelopment of the site shortly, and that they did not intend to proceed with the Pit Head Restoration Scheme at that time.

2.19 An outline application was subsequently submitted to Newark and Sherwood District Council on 25 June 2002 (reference 02/01392/OUTM) to redevelop the site to class B2 and B8 uses. This was approved on 24 March 2004 (**“the 2004 Permission”**) (see Appendix I). The application plan appended to the planning obligation completed in support of the proposed B2 / B8 development (see Appendix J) confirms two pertinent facts:

- The area of B2 / B8 development proposed (referred to as **“Bilsthorpe Business Park”**) encompasses the whole Pit Head (Mine) area as it is defined on the last approved Spoil Heap restoration plan i.e. the August 1997 Revision E Plan (refer to Appendix E).
- That the current BEC Application Site was encompassed within the development approved under the 2004 Permission (refer to the red line added to the Plan in Appendix J).

2.20 Two separate reserved matters approvals were subsequently granted pursuant to the 2004 Permission, which relate to phases 1 and 2 of Bilsthorpe Business Park. The developments approved by these reserved matters applications were subsequently implemented. The period in which to bring further reserved matters applications forward for other phases of the proposed redevelopment pursuant to the 2004 Permission has subsequently expired, and proposals for development at Bilsthorpe Business Park have since been progressed by way of full permissions.

2.21 Subsequent to implementation of the 2004 Permission i.e. development taking place within the Pit Head (Mine) area; the condition requiring the Proposed Development Area to be returned to a green end use fell away as evidenced by the facts that:

- Newark and Sherwood District Council has confirmed that the Bilsthorpe Business Park site had the benefit of planning permission when the development plan was being prepared and is still included within the employment land supply for the District and is recorded as ‘available employment land in a designated area’.

- The County Council's Principal Enforcement Officer never further pursued restoration of any parts of the Pit Head (Mine) area.

### ***Conclusions***

- 2.22 The Pit Head Restoration Scheme was approved on the condition that part of the Pit Head should be restored 2 years after the permanent cessation of mining activities at the Colliery and the Development Area should be restored, should no development take place on it, within 5 years of the permanent cessation. However, in deciding not to enforce against this condition when it was originally breached in April 1999 and again in April 2002, and in approving the 2004 Permission, the Council effectively extended the time limit indicated in this condition.
- 2.23 The Spoil Heap Restoration Scheme always envisaged flexibility in specifying that the Pit Head (Mine) area could be altered to suit particular development requirements. The agreed restoration scheme therefore crystallised around the plans approved in the 2004 Permission, which was subsequently implemented. As a consequence there is no planning condition requiring that the Pit Head (Mine) area be restored to a green end use. Accordingly, the BEC Application Site forms part of an area of land that can properly be classified as 'previously developed land' in accordance with the definition in the NPPF.
- 2.24 Irrespective of the above, any condition requiring the Pit Head (Mine) area to be restored to a green end use would have been first breached in April 1999 and again in April 2002. Ten years have subsequently passed since the date of any such breach, and as a consequence the Council has no mechanism against which to enforce the requirements of any such restoration requirement.
- 2.25 Accordingly, the assertions made by UKWIN in their Supplementary Representation on Restoration Plan are not correct.

### 3.0 HERITAGE MATTERS

- 3.1 Following the Pre-Inquiry Meeting the Applicant has instructed Cotswold Archaeology to provide further expert opinion on matters associated with heritage assets and compliance with legislation, local and national policy regarding the safeguarding of the historic environment. Cotswold Archaeology was the author of the *Environmental Statement Second Regulation 22 Submission Appendix 3-1: Setting of Heritage Assets* (August 2014).
- 3.2 The requirement to further inform the Inspector / Secretary of State on heritage matters has prompted the Applicant to revisit the position presented within paragraphs 8.62 to 8.69 of the SoCG 1 (sub-heading *Archaeology and Heritage*). In summary, within SoCG 1 the Applicant has, in error, agreed to overstated heritage impacts which are not consistent with its position in the *Second Regulation 22 Submission*. For the avoidance of doubt, the Applicant is of the opinion that the proposed BEC development would in no way harm the heritage significance of any designated or non-designated heritage asset. NCC's position is clearly recorded in their Committee Report and in SoCG 1.
- 3.3 The focus of the assessment reported in the *Second Regulation 22* concerned the Church of St Margaret, Bilsthorpe, a Grade I listed building; and Rufford Abbey comprising parkland, buildings and buried archaeological remains, many of which are designated heritage assets. The Applicant and NCC are in agreement that no other heritage assets warrant consideration in the determination of the application.
- 3.4 With regard to the Church of St Margaret, the Applicant is of the opinion that the proposed BEC development will in no way adversely affect (harm) the character, appearance or elements of setting which contribute to its heritage significance. In NCC's Committee Report at paragraph 88, the NCC (Built Heritage) consultation response concluded that: "...the impact of the proposals on the setting of the church is negligible and that any harm is very much 'less than substantial'." It can be concluded that NCC and the Applicant are in agreement that with regard to Section 66 of the Planning (Listed Buildings and

Conservation Areas) Act 1990<sup>1</sup> in so far as none of the special architectural or historic interests of the Church of St Margaret would be affected by the proposed BEC development. Furthermore, NCC and the Applicant are in agreement that with regard to the Church of St Margaret, the proposed BEC development would not conflict with Local or National policy regarding the safeguarding of the historic environment.

- 3.5 With regard to Rufford Abbey (and its constituent elements of heritage significance) the Applicant is of the opinion that although the proposed BEC development will be visible from certain locations within its setting, where the Stonish Hill wind turbines are already visible, none of the key views i) within; ii) out towards the wider landscape; or iii) towards the park (and the associated buildings and structures) will be affected by the presence or visibility of the proposed BEC development (specifically the exhaust stacks). Therefore the 'experience' or appreciation of the designated heritage asset(s) will in no way be harmed. In paragraph 88 of NCC's Committee Report conclude that the proposed BEC development would: *"...combine with the turbines to create cumulative impact by further introducing industrial elements into the existing rural views.... [resulting in an] ...impact that is harmful, but less than substantial"*. The Applicant does not recognise this change as harmful to the heritage significance of Rufford Abbey. However, should the Inspector / Secretary of State find merit in the position presented by NCC, the Applicant is in complete agreement with NCC that benefits of the proposed BEC development would outweigh the potentially perceived harm identified by their Built Heritage advisor.

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<sup>1</sup> The test being that the decision-maker needs to have 'special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses'.

**4.0 PLANNING CONDITION RELATING TO THE TRAVEL PLAN**

- 4.1 It has come to the attention of the Applicant and NCC that paragraphs 3.47 and 8.11 of SoCG 1 make reference to a planning condition seeking to control the preparation and implementation of the Travel Plan.
- 4.2 These statements have been made in error, as the implementation and compliance with the Travel Plan is a requirement of the Section 106 Legal Agreement and, as such, there is no need for it to be duplicated in a planning condition.
- 4.3 For the avoidance of doubt the Applicant and NCC are in agreement that no planning condition is necessary in connection with the Travel Plan. As such, the statements in paragraphs 3.47 and 8.11 of SoCG 1 can be disregarded.

**Appendices**

*Appendix A*

*Planning permission to amend the previously approved restoration contours  
relating to the disposal of colliery waste (reference 3/62/91/0091)*

***Appendix B***

***Correspondence sent by the Council to RJB Mining (UK) Limited (the predecessor to UK Coal) ("RJB") dated 21 September 1995***

*Appendix C*

*Revised Pit Head Restoration Scheme submitted to NCC Council in March 1996*

*Appendix D*

*Approval of Pit Head Restoration Scheme by the Council on 12 September 1996*

***Appendix E***

***Revised Spoil Heap Restoration Scheme (drawing reference 2007.1 Rev.E dated August 1997).***

***Appendix F***

***Approval of the revised Spoil Heap Restoration Scheme (drawing reference 2007.1 Rev.E dated August 1997) by the Council in April 1998.***

***Appendix G***

***Correspondence between the Council (Principal Enforcement Officer) and UK  
Coaldated 30 April 2002 requesting that the Pit Head RestorationScheme be  
carried out***

*Appendix H*

*UK Coal response (3 May 2002) to Council letter 30 April 2002*

*Appendix I*

*Planning permission (reference 02/01392/OUTM) - approved on 24 March 2004*

***Appendix J***

***Application plan appended to the planning obligation completed in support of the proposed B2 / B8 development (planning permission reference 02/01392/OUTM)***