

REPORT OF THE HEAD OF COMMUNITY WELLBEING AND DEVELOPMENT –
27 July 2015

APPLICATION NO:
P/2015 /0337

LOCATION:
BERSHAM BANK COLLIERY TIP
PLAS GRONO ROAD RHOSTYLLLEN
WREXHAM
LL14 4EG

DATE RECEIVED:
11/05/2015

COMMUNITY:
Esclusham

CASE OFFICER:
KH

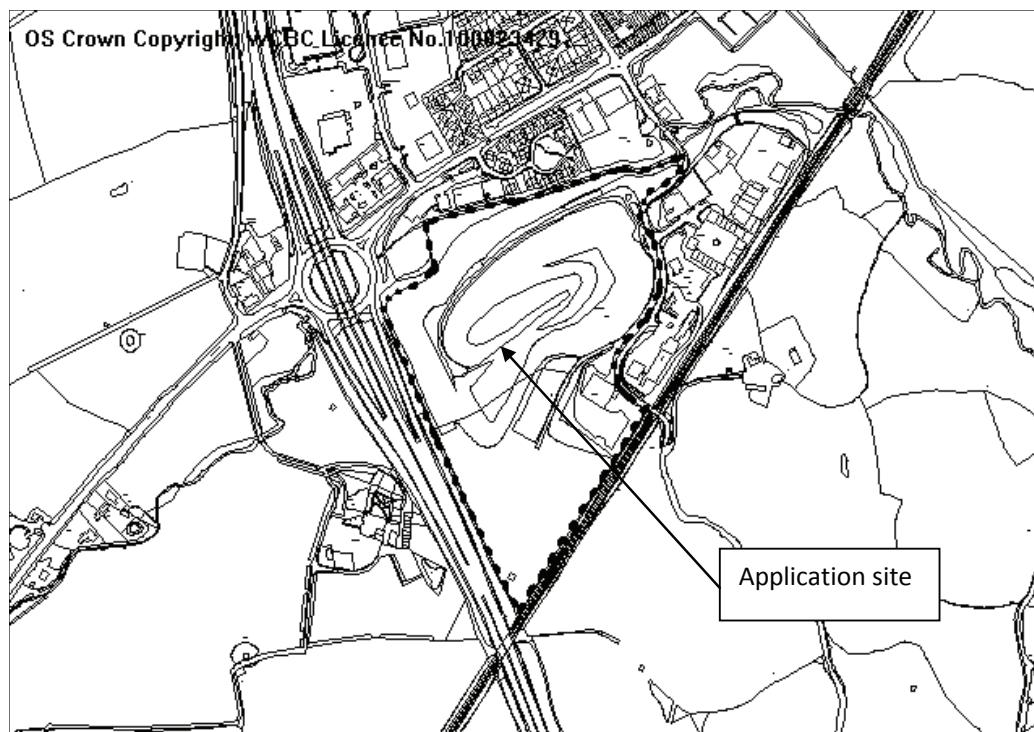
WARD:
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DESCRIPTION:
VARIATION OF CONDITION 1 OF
P/2008/0266 (RECLAMATION OF
COLLIERY SPOIL TOGETHER WITH
ASSOCIATED WORKS INCLUDING
THE SITING OF TEMPORARY
STRUCTURES AND THE
INSTALLATION OF RAIL FREIGHT
SIDINGS AT BERSHAM BANK
COLLIERY TIP) TO ALLOW
FURTHER 5 YEARS TO IMPLEMENT
DEVELOPMENT

AGENT NAME:
RICHARDS
MOOREHEAD AND
LAING
MS SHAN WYN JONES

APPLICANT(S) NAME:
BERSHAM (GLENSIDE) LTD

THE SITE



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13 hectares of land to the immediate south of Rhostyllen. Site is bounded by the A483 along its western boundary, Bersham Enterprise Centre to the east of Plas Grono Road on the eastern boundary, Glan yr Afon brook on the northern boundary and the railway line to the southern boundary. Former colliery buildings are located to the east and north east of the site which include a Scheduled Ancient Monument (also Grade II* Listed Building) and Grade II listed buildings.

PROPOSAL

Variation of Condition 1 of P/2008/0266 (reclamation of colliery spoil together with associated works including the siting of temporary structures and the installation of rail freight sidings at Bersham Bank Colliery Tip, to allow further 5 years to implement development.

HISTORY (Most recent)

Reclamation of colliery spoil tip together with associated works including siting of temporary structure and installation of rail freight sidings. Allowed on appeal 19.11.2009.

P/2007/0239 Reclamation of colliery spoil together with associated works including siting of temporary structures and installation of rail sidings. REFUSED 01.10.2007

DEVELOPMENT PLAN

Outside of settlement limit. Policy EC16 (site reclaimed for amenity purposes, PS2, GDP1(a) and EC4 (quality of development, landscape and natural environment), MW7 and MW8 (reworking mineral waste, beneficial after use), EC6, GDP1(h) (ecology), CLF6 (protection of rights of way), T6, GDP1(f) (noise and dust), GDP1(i) (contamination, stability), EC11 (archaeology) and EC6 (biodiversity). National policy in respect of minerals is set out in Minerals Planning Policy Wales (MPPW) (2001) and Minerals Technical Advice Note Wales 1: Aggregates (March 2004).

Other relevant guidance – Planning Policy Wales (Edition 7 July 2014).

CONSULTATIONS

Community Council: Application is viewed by the Community Council as having commenced work by forming a site access and removal of trees. Not clear as to why variation to Condition 1 is now sought. However, if the Community Council's view with regard to works already undertaken is at variance with Condition 1 of P/2008/0266, the Community Council has no substantive objections to the granting of an extension provided that:

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	i) There is no subsequent requirement to consider a change of use from the current amenity classification. This is to ensure that the environmental mitigation measures highlighted in the appeal documentation can be achieved. ii) The applicant agrees to carry forward its undertaking to WCBC, with contributions to the establishment and operation of the mining museum. iii) The applicant lodges the agreed bond to cover for any potential remedial works.
Local Member:	Notified 12.05.15
Adjoining Local Member: (Cllr Paul Pemberton)	No concerns at this stage
Public Protection:	No further comments to those re the original application.
Highways:	Recommends that all highway related conditions from the original permission are attached to any new permission.
Welsh Water:	Consulted 12.05.15
Natural Resources Wales:	No comments. Standard Advice Note to applicant.
Network Rail:	No comments
CADW:	No comments to make on the proposed development with the proposed development having a limited impact on the aforementioned Scheduled Monument at Bersham Colliery: Winding Gear.
Council Ecologist:	No objections provided that additional ecological surveys prior to further work on site.
Council Conservation Section:	No objections provided all other conditions continue to apply and the Section 106 Agreement remains in place.
Parks, Countryside & Rights of Way Manager:	Consulted 12.05.15
Ramblers Association:	Consulted 12.05.15
Trunk Road Agent:	Consulted 12.05.15
Neighbour Objections:	7 letters of objection on the following grounds: - Noise, dust, gas - Loss of existing vegetation - Concerns over health issues related to the development - Increase of traffic onto main road to and from Wrexham with increase in congestion and highway danger - Heritage implications with the loss of the spoil tip and should remain as a monument to the historical industrial heritage of the area

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Site Notices: - Adverse impact on wildlife
17 posted 26.06.15 and 01.07.15
Press Notice: Expired 10.07.15

SPECIAL CONSIDERATIONS

Background/Proposal: Planning application P/2008/0266 for the reclamation of colliery spoil with associated works, including the siting of temporary structures and the installation of rail freight sidings at Bersham Bank Colliery Tip was allowed on appeal on 19.11.2009. The appeal enabled reclamation of the spoil, installation of the rail sidings and retention of a part of the tip (approximately ¼ million tonnes of material) adjacent to the headgear engine house complex. A Section 106 was also required which required funding for a Regeneration Study Fund and regeneration funding at specific intervals for upgrading of the museum and any new outbuilding. Other funding was required for Curator contributions to run the Museum and also services contributions. The 106 also requires the applicant to enter into a bond with a surety to be bound to the Council for the carrying out of temporary works should the scheme of spoil removal be prematurely halted.

This application seeks to vary Condition 1 of the previous permission to enable a further five years to commence the works. All the relevant documentation and plans remain as P/2008/0266.

The relevant planning guidance for the 'renewal' of planning applications (Circular C/016/2014 – The use of Planning Conditions for Development Management provides clarity in assessing the merits of such proposals.

Planning permission can be renewed before the time limit for the commencement of development has expired under Section 73 of the 1990 Planning Act. As a general rule such applications should only be refused where:

- There has been some material change in planning circumstances since the original permission was granted;
- Continued failure to bring the development will contribute unacceptably to uncertainty about the future pattern of development in the area or
- The application is premature because the permission still has a reasonable time to run.

Material Changes: With regard to the above criteria I do not consider that there have been material changes in planning circumstances since the original planning permission was granted and the planning policy approach for the area remains as in the appeal process, the Wrexham Unitary Development Plan. No changes to highway considerations and whilst a new development has been built to the west of the site, it only implemented a permission which existed at the time of the Inspector's decision and of which he was fully aware of. Government policy has been merely reviewed and updated, in terms of Planning Policy.

Wales and Associated Technical Advice Notes (TAN1)

Future pattern of development: Consideration is also required of whether continued failure to begin the development will contribute unacceptably to uncertainty about the future pattern of development in the area. I do not consider it will provide uncertainty with regards to future development in the area and the applicant recognises the need to work with other plans and programmes, including the future Local Development Plan. The land around the site is predominantly developed and would have no immediate impact on new development in the future.

Prematurity: The application was submitted with a limited time span left on the permission. The submission was not considered as premature and is viewed as a reasonable and necessary approach.

The submission is considered to be fully compliant with the criteria detailed in Circular C/0161/2014 renewing the time limit for commencement of development.

Nature of Proposal: An extensive consultation process has been carried out with extensive individual neighbour consultation and 17 site notices and a press notice. 7 letters of objection have raised various issues regarding impacts on the environment – dust, noise from site operations, ecology, significant trees, highway safety and heritage assets. This application only covers the extension of time to commence development and not the principle of details of the development. The issues were fully considered by the Planning Inspectorate and Secretary of State for Wales in allowing P/2008/0266.

Planning permission to extend the time period for commencement would include a raft of planning conditions (32) previously attached to P/2008/0266 to mitigate impacts on highway safety including provision of rail sidings, highway improvement on Plas Grono Road – a widened footpath over the river at the Glan yr Afon Bridge and provision of Rail Sidings, ecology, environmental impact of dust and noise from site operations and protection of significant trees.

The application would also require compliance with a Section 106 legal obligation which makes provision for a substantial financial contribution to enable the winding gear engine house to be repaired, to partially fund further refurbishment and possible construction of an additional building to enable a mining museum to be set up and funding for first five years of operation.

The 106 also requires provision of a financial bond for securing effective restoration of the site should works cease on site before completion.

CONCLUSION

I am satisfied that the assessment criteria in Circular C/016/2014 is fully complied with and a further extension to time is appropriate. The conditions and Section 106 previously required under the approval P/2008/0266 will be attached to the current application. A supplementary deed to link the 106 with the new permission will be required.

RECOMMENDATION: That permission be GRANTED

CONDITION(S)

1. The development hereby permitted shall commence not later than the expiration of 5 years from the date of this permission. Written notification of the date of commencement (defined as any operations associated with the engineering of the site for reclamation) shall be given to the Minerals Planning Authority within 7 days of such commencement.
2. The development hereby permitted shall cease not later than 9 years from the date of commencement of the development hereby permitted unless otherwise previously approved in writing by the Minerals Planning Authority, and the site shall be restored in accordance with the approved Landscape Master Plan or any variations approved in advance by the Minerals Planning Authority.
3. Notwithstanding the approved plans and documentation full details of the proposed site access shall be submitted in writing for the further approval of the Minerals Planning Authority. The access as approved shall be implemented prior to the first use of the site hereby approved and retained thereafter for the duration of the reclamation works.
4. Notwithstanding the approved plans and documentation, full details of a scheme of highway improvements along the link between Glan-yr-afon Bridge and the proposed site access shall be submitted in writing for the further approval of the Minerals Planning Authority. Details shall include road widening at the southern bend in the carriageway, road markings between the proposed site access and Glan-yr-afon Bridge, clearance of foliage to improve forward visibility at the northbound approach to the bridge and advance warning signage either side of Glan-yr-afon Bridge. The works as approved shall be provided prior to the first use of the site hereby approved and maintained thereafter.
5. No works shall commence until details of a widened footway over the river at the Glan-yr-afon Bridge have been submitted to and approved in writing by the Minerals Planning Authority. The works shall be completed prior to any material being taken off the development, unless otherwise approved by the Minerals Planning Authority.
6. Prior to commencement of development a detailed Working Plan shall be submitted to and approved in writing by the Minerals Planning Authority. This shall include detailed consideration of working phases and methods which will maximise the retention of peripheral mounds and vegetation to mitigate noise and visual disturbance of the site clearance works, contamination, combustion and stability issues and provision of periodic

reviews of working procedures. The works shall be carried out strictly in accordance with the approved Working Plan unless otherwise approved in writing by the Minerals Planning Authority.

7. Prior to commencement of the various stages of the development hereby approved, a detailed scheme to deal with the risks associated with contamination at the site shall be submitted to and approved in writing by the Minerals Planning Authority. The scheme shall include the following elements unless specifically excluded in writing by the Minerals Planning Authority:

- a desk study identifying all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors, and identification of any potentially unacceptable risks arising from contamination at the site;
- a phased site investigation scheme based on the results of the desk study to provide information for an assessment of the risk to all receptors that may be affected, including those off site;
- the results of site investigations and risk assessments and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken; and
- a verification report on completion of the works set out for each phase, confirming the carrying out of the remediation measures in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

8. If during development, contamination not previously identified is found to be present at the site, no further development (unless otherwise approved in writing by the Minerals Planning Authority) shall be carried out until the developer has submitted to, and obtained approval in writing from the Minerals Planning Authority, as amendment to the above method statement detailing how this unsuspected contamination is to be dealt with.

9. Prior to the commencement of operations on the site, a detailed Dust Management Scheme shall be submitted to and approved in writing by the Minerals Planning Authority. The Dust Management Scheme shall be carried out as agreed throughout the period of operations on the site.

10. No loaded lorries shall leave the site unless their loads have been trimmed and sheeted so as to prevent spillage.

11. All haulage vehicles leaving the site shall pass through a wheel wash facility which has previously been approved in writing by the Minerals Planning Authority. The facility shall be provided prior to any haulage vehicles leaving the site and retained thereafter for the duration of the works hereby approved. Vehicles shall only leave the site when their wheels and chassis are clean.

12. Prior to commencement of operations on the site a detailed Dust Monitoring Scheme shall be submitted in writing for the approval of the Minerals Planning Authority. The approved scheme shall be maintained through the entirety of the reclamation works.

13. During normal operations the level of noise emitted from the site shall not exceed 55 dB(A) Laeq(1 hour) as measured at any noise sensitive receptor outside the site. Noise in excess of this limit, up to a limit of 70 dB(A) Laeq(1 hour) may be emitted for up to 8 weeks in any year in connection with short-term activities such as the construction of screening mounds, temporary

haul roads, and permanent landforms. The Minerals Planning Authority shall be notified in advance of such periods.

14. Prior to commencement of development a detailed scheme of compliance noise monitoring, to include frequency and procedures shall be submitted to and approved in writing by the Minerals Planning Authority. The scheme shall be carried out as approved and the Minerals Planning Authority shall be advised 14 days in advance when noise monitoring is to be carried out. Where noise levels are found to exceed the specified noise limits, additional mitigation measures shall be put in place in accordance with details submitted to and approved by the Minerals Planning Authority.

15. Prior to the commencement of operations, details of procedures for effectively responding to dust complaints and noise complaints, including provision for identifying the source of dust and noise and a review of mitigation measures as appropriate, shall be submitted to and approved in writing by the Minerals Planning Authority. The approved procedures shall be in place throughout the reclamation works.

16. Notwithstanding previous surveys, prior to the commencement of each phase of development a comprehensive Ecological Survey shall be undertaken. The report of the survey, including details of any mitigation measures required, shall be submitted to and approved in writing by the Minerals Planning Authority before that phase of development is commenced. Any mitigation measures required shall be carried out as approved.

17. Development shall not begin until an appropriate photographic survey of the colliery spoil and its relationship with colliery buildings has been carried out in accordance with details to be submitted to and approved in writing by the Minerals Planning Authority. The resulting photographs shall be deposited with the County Sites and Monuments Record, operated by the Clwyd Powys Archaeological Trust, 7a Church Street, Welshpool, Powys, SY21 7DL.

18. No materials shall be removed from the site until a detailed Landscape Master Plan and specification has been submitted to and approved in writing by the Minerals Planning Authority. Details shall include hard and soft landscaping works, ecological habitat creation, recreation provision, areas of vegetation to be retained and removed, proposed landform, phased areas of implementation and an implementation timetable. The Plan as approved shall be fully implemented in accordance with the approved timetable.

19. In the event that site excavation works substantially cease for a continuous period of two years, within 12 months an alternative scheme and programme of implementation for the interim restoration and aftercare of the site shall be submitted to and approved in writing by the Minerals Planning Authority. The approved scheme shall be implemented in accordance with the approved programme.

20. No development hereby approved shall be commenced until a Landscape and Ecological Aftercare Management Plan has been submitted to and approved in writing by the Minerals Planning Authority. The plan shall include management of existing landscape features, the establishment, maintenance and management of all new planting, ecological habitats and recreational spaces, and a management timetable and shall cover a 5 year period of aftercare. Works shall be carried out strictly in accordance with the details as approved and shall be retained thereafter.

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21. Any vehicles or machinery operating on the site which is fitted with a reversing warning shall only have an inaudible type or other reduced noise device which has previously been approved in writing by the Minerals Planning Authority.
22. No development hereby approved shall be commenced until a scheme for the disposal of foul and surface waters from the temporary buildings and compound area has been submitted to and approved by the Minerals Planning Authority and fully implemented in accordance with that scheme. The works as approved shall be maintained for the entirety of the scheme of reclamation.
23. No development shall take place until an arboricultural method statement to carry out the works in accordance with BS5837 has been submitted to and approved in writing by the Minerals Planning Authority. The works shall be carried out strictly in accordance with that approved method statement.
24. No working, except for essential repair and maintenance, shall be carried out outside the following hours, unless otherwise approved in writing in advance by the Minerals Planning Authority:
- 0730 hours to 1730 hours (Monday to Friday)
 - 0800 hours to 1300 hours (Saturday)
- No working shall take place on Sundays and Bank Holidays, except for essential repair and maintenance.
25. Nothing other than uncontaminated, inert, non-polluting materials shall be imported into the site.
26. Deliveries of excavated material from the site by road shall be restricted to 54 vehicle movements per day (54 in and 54 out).
27. Written records shall be maintained of all deliveries of material from the site and these records shall be available for inspection by the Minerals Planning Authority at all reasonable times.
28. The proposed rail freight sidings shall be operational within 2 years of commencement of the development, unless previously approved in writing by the Minerals Planning Authority. Thereafter, the operator shall use its best endeavours to maximise the use of railborne freight.
29. Prior to the first use of the proposed rail freight facility, a scheme of noise mitigation measures with regard to loading of rail trucks and the additional noise impact as a result of the additional rail freight shall be submitted to and approved, in writing, by the Minerals Planning Authority. The approved mitigation works shall be implemented prior to the first use of the rail sidings and maintained for the duration of the development hereby approved.
30. No extractive operations, other than that associated with the construction of the rail sidings and with the prior agreement and approval of Network Rail, shall take place within a lateral distance of 10 metres from the railway boundary and no overburden must be tipped or any buildings erected on the 10 metres berm between the edge of the excavation and the railway boundary.
31. Cranes and jibbed machines used in connection with the works must be so positioned that the jib or any suspended load does not swing over railway property or within 3 metres of the nearest rail if the boundary is closer than 3 metres. All cranes, machinery and constructional plant must be so

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positioned and used to prevent the accidental entry onto railway property of such plant, or loads attached thereto, in the event of failure.

32. There shall be no interference with any drain or watercourse belonging to Network Rail and no interference to any existing drainage rights enjoyed by Network Rail.

NOTE(S) TO APPLICANT

You are reminded of the requirement regarding Public Footpath no. 15 and temporary/permanent closure orders detailed in the letters from the Council Rights Of Way section dated 19th and 20th March and attached to this decision.

Your attention is drawn to Highway Supplementary Notes on the enclosed 'Applicants' Rights and General Information'.

The separate written consent of the Local Highway Authority must be obtained before any work is carried out within the confines of the highway.

The site is required to comply with the provision of the Health and Safety at Work etc Act 1974 the provision of which are administered by the Health and Safety Executive Unit 7 and 8, Edison Court, Ellice Way, Wrexham Technology Park, Wrexham, LL13 7YT.

With regard to Condition 37 the requirements should be fully considered against Minerals Planning Guidance 11: Control of Noise at Surface Mineral Workings in terms of noise arising from the reclamation of the colliery spoil and associated works.
