

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL
MUNICIPAL YEAR 2015-2016

**DEVELOPMENT CONTROL
COMMITTEE
5 NOVEMBER 2015**

**REPORT OF: SERVICE
DIRECTOR PLANNING**

	Agenda Item No. 13
ENFORCEMENT OF PLANNING CONTROL – APPLICATION NO'S 10/0292/10 AS AMENDED BY 13/0466/10. TOWER SURFACE COAL MINE SITE, RHIGOS ROAD, HIRWAUN, ABERDARE CF44 9UD	

1. PURPOSE OF THE REPORT

Members are asked to consider the determination of the above mentioned enforcement matter.

2. RECOMMENDATION

That it is inexpedient to take any further action in the matter.

That Members resolve to take no further action in respect of the footprint and height of the overburden mound at the Tower Surface Coal Mine site and approve the amended plans submitted as an additional plans to the originally approved scheme 10/0292/10 as amended by 13/0466/10.

3. BACKGROUND

Following public concerns raised regarding the height of the overburden mound on the site, the developer, Tower Regeneration Limited (TRL), submitted details to show the maximum overall footprint and height of the overburden mound in years 5/6 of the coal operations. The submitted details include a written statement, plans, cross sections through the overburden mound and photomontages.

The submitted details have been the subject of publicity in the form of site notices in the local area, consultation with the local community councils and a site liaison meeting was held on 1 September 2015 at Ramoth Church, Hirwaun, specifically to discuss the design of the overburden mound and its stability.

The revision to the footprint and height of the overburden mound involves the following amendments to the originally approved development in the following ways:-

- i) The front face of the overburden mound is located approximately 70 to 160 metres further south of the site boundary than originally approved, (i.e. further away from the settlement of Hirwaun).
- ii) The maximum height is raised from 295m A.O.D. to 315m A.O.D. therefore, 20m greater in height than originally approved with the batters redesigned accordingly.
- iii) The removal of topsoil and subsoil mounds in the northern part of the site.
- iv) Retention of the existing lagoon system, a public access route adjacent to Tower Road and the Hirwaun Recreation Ground and retention of an ecologically diverse area measuring approximately 7ha in area.
- v) The removal of the requirement to create a new lagoon system to treat surface water drainage,
- vi) The surcharging of overburden material over restored backfill areas which will reduce the area available for restoration each year prior to the final restoration in Year 8.

TRL has advised that the overall design of the overburden mound has been undertaken in accordance with a geotechnical assessment to ensure its structural integrity and to conform to current legislation.

The works on site have also been undertaken in accordance with mining working plans which are subject to the requirements of a restoration bond which is regularly updated in accordance with detailed assessment undertaken by the Coal Authority on behalf of the Council to ensure that there is adequate monies available to the Council to cover the estimated cost of restoring the site, in the event of TRL defaulting.

TRL has advised that it is now virtually impossible to revert to the original design of the overburden mound for the following reasons:

- (i) Access to the original footprint has been lost with the revised overburden mound in place.
- (ii) The volume of material which would need to be moved is in the order of 17 million tonnes of material. To move this volume would mean dramatically reducing the site coaling operations and redeploying equipment and would have significant economical implications for the overall project.

4. SITE APPRAISAL

The application site relates to the Tower Coal Surface Mine which commenced operations in March 2012 in connection with the approved development (10/0292/10).

The overall site covers an area of 253 hectares and is located to the south, south west and west of Hirwaun. Most of the site lies to the

south of the A4061 Rhigos Road. The site occupies a generally sloping area from 340m A.O.D. in the south to 210m A.O.D. in the north. The natural drainage of the site has been altered through the implementation of the Surface Coal Mine.

Vehicular access to the site is gained from the A4061 Rhigos Road at a point 900m west of the A465 roundabout and 200m east of the Hirwaun Industrial Estate Roundabout.

The nearest residential properties to the site are located adjacent to the access on Rhigos Road i.e. properties known as Maesglas, Cartref and Willows Farm. There are also residential properties within Hirwaun such as those within Redhill Close adjacent to the junction of the A465 and the A4061, Tower Road north of the A4059, Limeslade Close and Caswell Close, properties south of Johnson Park (Mountain View), properties further east off Hirwaun Road known as Waungron, Lyndhurst, Dunromin, Fairview Bungalow and Mountain View Bungalow, and properties within Mount Pleasant and Steam Coal Lane.

The overburden mound is located close to the northern and eastern boundaries of the site and consists of material that is excavated from the extraction area and is made up of rock and mudstones which are stored temporarily above ground during the life of the site. It represents a significant amount of material and presently represents about 17 million tonnes of material.

The existing height of the overburden mound has been recently surveyed which has confirmed that it has reached the proposed maximum height of 315m A.O.D. The maximum footprint is not expected to be reached until years 5/6 of the site operations, i.e., in 2017/18. It will then diminish in size as the material is progressively returned to the working void as the excavation void advances in order to provide for progressive restoration on the site.

5. RELEVANT PLANNING HISTORY

10/0292	Tower Colliery, Rhigos Road, Hirwaun, Aberdare	Land remediation and reclamation of old tips, derelict land and buildings; surface coal extraction and associated ancillary development including improvements to the access onto the A4061; recontouring and landscaping of the site to enable future re-development; restoration and after care for agricultural purposes, nature conservation with public access and provision of a visitor/education centre. Environmental Statement	Granted 16/12/11
---------	---	---	---------------------

Addendum received 17/01/11, additional information received 05/05/11 regarding ecology and landscape and visual assessment, details of restoration, soils handling, drainage matters and revised planning drawings to reflect amendments and additional information received 24/08/11 incorporating a Restoration Strategy Plan which was amended on 27/10/11, 05/12/11, 12/12/11 and 14/12/11.

13/0466	Tower Colliery, Rhigos Road, Hirwaun, Aberdare	Variation of conditions 19, 20, 21, & 22 of planning approval 10/0292 to extend working hours on Saturday to 1600 Hours.	Refused 30/12/13 Allowed on appeal 03.06.14.
---------	---	--	--

6. PUBLICITY

The submitted amendments to the overburden mound have been advertised by means of site notices. Three letters have been received raising the following matters:-

Footprint/Height - Overburden should be no higher than 315m and no wider than present design.

Safety - Concerned if the tip collapses again as contains over 17 million cubic metres - potential to cause harm. Overburden mound should be reduced in height and all coal production should be ceased in the meantime. HSE have only visited site on 7 scheduled times not randomly. Geotechnical engineer cannot state there will not be further collapses.

Landscape/Residential amenity - Removes views of mountain scenery. It is an eyesore.

Dust- blackens everything and affects future health of the village.

In addition, a petition has been received signed by 179 persons and "requests that a decision on the above amendment be postponed as we are aware that the applicant's are considering further planning amendments to the site which could affect your decision on the proposal".

7. CONSULTATIONS

Hirwaun and Penderyn Community Council – express concern regarding the height at present and if it were to increase in height, the safety implications, enforcement and monitoring. Request an independent enforcement officer to monitor the conditions on site and the working practices to ensure the safety of the tip.

Countryside Section - Advises that in ecological terms the revision provides significant long-term benefits in terms of retaining habitats, allowing species and mitigation to progress (e.g. marsh fritillary habitat works) and ensuring a better balance of habitat retention/mitigation to habitat loss. Given the very significant habitat impacts of the overall opencast scheme the capacity to meaningfully reduce those impacts within this revision are very welcome, and from a nature conservation perspective are considered to be highly desirable.

8. POLICY CONTEXT

Rhondda Cynon Taf Local Development Plan

The Proposal and Constraints Maps show that the overall site lies within the area of primary and secondary coal resources, and that within the western part of the site there is a hazardous installation consultation zone for the high pressure gas main, Sites of Importance for Nature Conservation SINC's 9, 10 and 12 lie within the site. Adjacent, and to the north of the mineral railway line lies the Blaen Cynon Special Area of Conservation SAC. The site also lies within the allocated Northern Strategic Area, NSA8, where the concept plan shows the northern part of the site for employment and residential uses and the southern part for open space. The northeast of the site is affected by the Welsh Government scheme for dualling the A465 Heads of the Valleys Trunk Road.

Policy CS10.6 – seeks to ensure that impacts upon residential areas and sensitive land uses from mineral operations and the transportation of minerals are limited to an acceptable proven safe limit.

Policy AW5 – supports development proposals where amenity and accessibility criteria are met.

Policy AW6 - supports development proposals where design and place making criteria are met.

Policy AW8 – seeks to preserve and enhance natural heritage from inappropriate development including locally designated sites such as SINC's and features of importance to the landscape.

Policy AW10 states that development proposals will not be permitted where they would cause or result in an unacceptable risk of harm to health and/or local amenity because of air, light, water and noise

pollution, contamination, land instability and flooding or any other identified risk to public health or safety.

National Guidance

In the determination of planning applications regard should also be given to the requirements of National Planning Policy which are not duplicated in the Local Development Plan, particularly where National Planning Policy provides a more up to date and comprehensive policy on certain topics.

Planning Policy Wales Chapter 3 (Making and Enforcing Decisions), Chapter 4 (Planning for Sustainability), Chapter 5 (Conserving and Improving Natural Heritage and the Coast), Chapter 7 (Economic Development), Chapter 12 (Infrastructure and Services) and Chapter 13 (Minimising and Managing Environmental Risks and Pollution) set out the Welsh Government's policy on planning issues relevant to the determination of the application.

Other relevant policy guidance consulted

PPW Technical Advice Note TAN 11 Noise provides guidance on how the planning system can be used to minimise the adverse impact of noise and outlines the main considerations to take into account when determining planning applications.

Minerals Planning Policy Wales (MPPW) Part 1 General Guidance, A (To provide for the working of minerals), B (To Protect areas of importance to the natural and built heritage from inappropriate mineral development), C (To reduce the impact of mineral extraction and related operations during the period of working) D (to achieve a high standard of restoration and after care, and provide for beneficial after uses when mineral working has ceased) and Part 2 Policies for Individual Minerals -Para's 61-63 (Coal).

Minerals Planning Policy (Wales) Minerals Technical Advice Note (Wales) 2: Coal (MTAN2) – sets out the Welsh Government's detailed advice regarding the mechanisms for delivering policy for coal extraction of surface and underground working, advice on best practice, how impacts should be assessed and what mitigation measures should be adopted.

9. REASONS FOR REACHING THE RECOMMENDATION

Main Issues

Impact on landscape character and appearance

The proposed changes to the approved development should be considered in light of the assessment of the original scheme when it

was considered by Members of the Co-ordinating Development Control Committee on 30 June 2011. It was recognised at that time that the overburden mound would be a large, unnatural and dominant feature in the local landscape and that it would not hide the excavation cut at higher elevations behind which were recognised to be of a significant scale. It was assessed that the overburden mound would be of moderate to major significance in the local landscape. In visual terms from the village of Hirwaun it would be clearly visible but it would have appeared below the horizon and the summit of Hirwaun Common would still have been visible.

In respect of the submitted amendments to the overburden mound, concern has been raised regarding the removal of views of the mountain side of Hirwaun Common and whether the overburden mound is to become higher and wider. The revised profile and footprint of the overburden mound, at its maximum, in Years 5/6 are shown within the submitted revised cross sections and photomontages. It is considered that the main landscape and visual effects would be from users of adjacent public footpaths, recreational facilities and the residential properties living in close proximity to the north and eastern boundaries of the site. To the west of the western boundary of the site there is limited visibility of the overburden mound and to the south of the southern boundary of the site views are restricted to users of open access land.

From viewpoints adjacent to the northern and north eastern boundaries of the site, the revised height of the overburden has now become visible on the skyline and is a moderate detractor of views. In mitigation, the newly formed front faces of the overburden mound have recently been graded and hydro seeded in accordance with the approved seed mix and this has helped to soften their visual impact. From further afield, within the central part of Hirwaun, from vantage points which have unobstructed views of the site, the overburden mound overall appears higher than the original in the landscape although compared to the original approved development it would still appear visible below the skyline. From views to the east of the site, the overburden mound appears both higher and wider as it takes up more of the site than originally approved. However, it is considered that in the wider landscape these revisions represent a minor amendment to the original scheme.

There is also a duty to have regard to the effects on the special qualities of the National Park, as the boundary of the Brecon Beacons National Park lies within 1.5km of the site boundary. In this respect it is considered that at over 1.5km distance, the revised profile compared to the original would still sit below the sky line and would represent a minor change to the originally approved overburden mound in the wider landscape from the National Park.

In conclusion, the public concern raised by local residents and consultation responses regarding the revisions to the overburden mound is acknowledged. Compared to the originally approved scheme, the revisions show that the overburden, at its maximum extent in Years 5/6, (2017/2018) would be 20m higher, would be visible on the skyline from locations close to the north eastern boundary of the site but that it would be between 60 to 170m further way from the settlement of Hirwaun. From vantage points within the village and from further afield the overburden mound would still appear below the skyline but would take up a larger footprint as the overburden takes up more of the site. However, it should be noted that whilst the revisions would represent a moderate change to the originally approved overburden mound, at that time it was recognised that it would represent a significant, dominant feature in the landscape, albeit for a maximum 3 year period until the material is used to restore the excavation void.

Taking all of the above factors into account, on balance it is considered that the proposed revisions are acceptable in terms of their consequences for the character and appearance of the area.

Impact on nature conservation/ ecology of the site.

The revised footprint of the overburden mound further south does bring some significant ecological benefits. The revision physically protects an area of 7ha of existing habitat which would otherwise have been lost in the original footprint. This includes a significant part of the Hirwaun Common SINC 10 and areas of species-rich marshy and neutral grassland, woodland/scrub and species-rich colliery spoil. It also includes a corridor of mitigation for the marsh fritillary butterfly, and the operator has been undertaking measures towards managing and enhancing these areas for the butterfly's use.

The reduction in footprint of the overburden tip protects a wide band of habitat between the site and the A465, it removes the requirement for screening bunds along the southern edge of the mining area (which involved additional habitat loss), and further removes the impacts of haulage routes and construction areas which would have been required to execute these works (which would have inevitably caused further habitat loss and disturbance).

The Council's Ecologist has advised that in ecological terms the revision provides significant long-term benefits in terms of retaining habitats, allowing species and mitigation to progress (e.g. marsh fritillary habitat works) and ensuring a better balance of habitat retention/mitigation to habitat loss. He also advises that given the very significant habitat impacts of the overall scheme the capacity to meaningfully reduce those impacts within this revision are welcome, and are considered to be highly desirable from a nature conservation perspective.

Impact on residential amenity

The revisions to the location of the overburden mound results in the site operations moving approximately 70 to 160m further away from the settlement of Hirwaun. The relocation has resulted in other site features being amended to those originally approved in that the existing lagoon system has been retained and the soil storage mounds have been relocated further south into the site. These revisions have further reduced the extent of site operations in close proximity to the northern boundary of the site.

These revisions have been subject to a revised noise report which has concluded that the conclusions within the original Environmental Statement submitted to accompany the original application (10/0292) do not change. However, it does state that the existing operational noise management plan should be amended so that the “removal of the overburden mound during years 7/8 at ground level would not be undertaken during dawn or evening periods. Subject to the amendments to the noise management plan, the proposal is considered not to be of detriment to the living conditions of local residents in terms of noise.

The site is subject to regular noise, dust and environmental monitoring reports in accordance with the approved Strategic Environmental Management Plan which are reported to officers of the Planning and Public Health and Protection Divisions of the Council on a monthly basis and to the Site Liaison Committee bimonthly. The reports have shown that the site has been operating within its permitted noise and dust levels which were imposed on the original planning permission, as amended by the consent allowed on appeal (13/0466) which permitted Saturday working on the site. As works have been undertaken in accordance with the submitted amendments there is no reason to suggest that future working to years 5/6 would result in any significant differences to the dust generation at the site.

It is therefore concluded that the revisions to the overburden mound are considered to be acceptable in terms of local amenity because of air and noise pollution and would comply with Policy AW10 of the LDP.

Impact on surface water drainage and water pollution

The works on site have been undertaken in accordance with a surface water management scheme and pollution prevention scheme which have been approved by the Council's Flood Risk Management officers and Natural Resources Wales. The revisions to the overburden mound have taken place in accordance with these approved schemes.

It is therefore concluded that the revisions to the overburden mound are considered to be acceptable in terms of surface water drainage and would comply with Policy AW10 of the LDP.

Structural integrity of the overburden mound

A number of local residents have raised concerns about the stability and safe design of the revised footprint and height of the overburden mound and whether there is effective monitoring of these matters. In this regard MTAN 2 confirms that spoil heaps which contain refuse from a mine are tips and are subject to the Mines and Quarries (Tips) Regulations 1971. These have subsequently been superseded by the Quarries Regulations 1999 (The Regulations). Part IV of The Regulations deals with the safety of tips and excavations and specifies that a site operator has a general duty to ensure that any tips and excavations on a site are designed, constructed, operated and maintained so as to ensure that instability or movement which is likely to give rise to a risk to the health and safety of any person is avoided throughout the life of the tip.

The Health and Safety Executive is the enforcement body of The Regulations and employs a number of specialist Quarry Inspectors to oversee the safety at mines and quarries including tip and slope stability.

In respect of the size of the excavations and tips at Tower, the Regulations require the site operator to produce a geotechnical assessment to determine the design, safety and stability of excavations, tips and stockpiles, which should be undertaken by a competent geotechnical engineer. In conjunction with the geotechnical specialist, the operator is required to provide "excavation and tips rules" to ensure the safe construction and operation of excavations and tips and the precautions required to make and keep them safe. These rules include specifying the way in which the excavation or tip will be constructed and managed to ensure safety and includes the maximum height, standard of foundations, the nature, quantity and location of all substances deposited within a tip, provision of drainage, height and slope of faces, type of plant and machinery used and the frequency, nature and extent of inspections. The Regulations also provide for a "suitable and sufficient" appraisal of all the excavations and tips is undertaken by a competent person at appropriate intervals and whenever there is a significant change in circumstances.

The overburden mound at Tower is therefore subject to all of the above requirements. It is subject to a geotechnical assessment and the operator has established daily and weekly reporting inspection regimes in order to comply with these Regulations. TRL has advised that the inspection regime at the site comprises:

- (a) Daily inspections of all overburden mounds, tips, excavations and working faces by Site Supervisors trained to undertake these inspections,

- (b) Weekly inspections of all overburden mounds, tips, excavations and working faces by the qualified Site Engineer,
- (c) Quarterly inspections of all overburden mounds, tips, excavations and working faces by an independent Consulting Geotechnical Engineer,
- (d) Additional inspections of all overburden mounds, tips, excavations and working faces by an independent Consulting Geotechnical Engineer as required.

The HSE has visited the surface coal mine site at Tower on a number of occasions since works began in March 2012. One incident occurred in relation to the overburden mound (OBM1) in August 2012 when there was a collapse within the north eastern section. In this incident, HSE established that the failure did not present any off site risk to members of the public at any time. HSE was also satisfied that the Company undertook remedial action to stabilise the area and contain the failed material. The last visit by HSE regarding stability and security of the coal spoil mounds was undertaken in January 2015 when no deficiencies were identified.

It is clear that in accordance with The Regulations the design and construction of the overburden mound is required to be undertaken in accordance with a geotechnical design by a competent geotechnical engineer and continually maintained, reported, inspected and updated by the site operator and the geotechnical engineer. The Regulations are overseen by the Quarry Inspectors of HSE who periodically visit the site to inspect the site records and the site workings to secure the safety of any tip or excavation.

As Planning considerations should not duplicate controls by other statutory bodies it is concluded that, the stability and safe design of the overburden mound is secured by the Quarry Regulations. The revisions to the overburden mound are therefore considered to be acceptable in terms of land instability and in this respect would comply with Policy AW10 of the LDP.

Conclusion

Whilst concerns have been raised regarding the revised details of the overburden mound it is considered that on balance, compared to the originally approved overburden mound the proposed revisions are acceptable in terms of their consequences for the character and appearance of the area. In terms of the nature conservation/ ecology of the site there are significant benefits of the revised location of the overburden mound in that 7ha of SINC habitat is retained. In terms of the impacts on residential amenity, surface and water pollution and to land stability the amendments are considered acceptable. It is therefore considered that no further action should be taken. Furthermore, it is considered that the consideration of this matter should not be

postponed, as requested by local residents, as any future amendments to the site would be subject to its own planning considerations.

LOCAL GOVERNMENT ACT 1972

as amended by

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LIST OF BACKGROUND PAPERS

DEVELOPMENT CONTROL COMMITTEE

5 NOVEMBER 2015

REPORT OF: DIRECTOR OF REGENERATION AND PLANNING

REPORT

OFFICER TO CONTACT

**ENFORCEMENT OF PLANNING
CONTROL – APPLICATION NO'S
10/0292/10 AS AMENDED BY
13/0466/10.**

**MRS D BOWHAY
(Tel. No. 01443 494743)**

**TOWER SURFACE COAL MINE
SITE, RHIGOS ROAD, HIRWAUN,
ABERDARE CF44 9UD**

See Relevant Application File

This page intentionally blank