Worcestershire County Council's (WCC's) Response to Inspector's without-prejudice observations on WCC's Response to Inspector's previous queries about suggested planning conditions

2024.11.13

1. **Question 2 Condition 4 – appeal decisions do not include 'informatives'.**

   Yes noted, the extract from County Highways is relating to an email exchange at the planning application stage. The purpose of this extract was to demonstrate that Officers had queried with County Highways whether they were content with the drawing titled: 'Proposed Site Access Preliminary Design Layout', given that it refers to "Preliminary Design". It was not the intention of the Council to recommend the imposition of an informative relating to a Section 278 Agreement, as this would be covered by other legislation.

2. **Question 8 Condition 20 – still not clear about provision of new PRoW – if no s25 Highways Act agreement ever completed would the Condition require maintenance of paths in perpetuity or for the duration of the development ?**

   The Council consider that as the permission would run with the land, the way the condition is worded in its current format, is that it would require the maintenance of the paths in perpetuity, as the condition refers to the paths being *"provided and maintained in accordance with the approved details, and shall remain in situ and available for public use".*

3. **Question 8 Condition 21 – for how long would this Condition require the public access routes to be provided ? As permissive paths under what circumstances could the permission to use the paths be withdrawn either temporarily or permanently ?**

   The Council consider that as the permission would run with the land, the way the condition is worded in its current format, is that it would require the routes to be provided and maintained in perpetuity. Having liaised with the County Footpath

Officer, it is understood that this was their intention. The Council note that Condition 21 does not include the phrase "*shall remain in situ and available for public use".* In view of this, for consistency, the Council recommend that this condition be amended to include this phrase:

Thereafter, the public access routes shall be provided and maintained in accordance with the approved details, ***and shall remain in situ and available for public use.***

The Council understands that the phrase permissive routes was used to distinguish between the routes proposed to be designated as formal Public Rights of Way, and routes not proposed to be formally adopted by the Council. Note CD1.14 and CD3.17 originally referred to all routes proposed to be formal Public Rights of Way, and then following the County Footpath Officer's comments (see CD4.22) the phrase 'Proposed New Permissive Bridleways' appeared (see CD5.14).

4. **Question 21 Condition 48 – TCPA Schedule 5 provides for a maximum period as may be 'prescribed'. Is this a reference to the matter being prescribed by statutory provision or by some other means ? The PPG refers to the requirement for steps after 5 years to be agreed by the minerals operator. As any planning permission would run with the land would it be the case that the agreement of the appellant [as operator] could not bind any future operator ? If so could a different future operator refuse to agree with any aftercare provisions beyond a 5 year period after restoration ?**

   The Council consider that Schedule 5 of the Town and Country Planning Act 1990 (as amended) is providing a minimum period of five years for aftercare, or any other period the Council prescribes, noting that Schedule 5, 2(7) states: *"In sub-paragraph (6) "the aftercare period" means a period of five years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed"*. The Council does not consider Schedule 5 provides for a maximum period, otherwise the Council could not prescribe longer. The Council does not consider it is the statute that would

prescribe a period other than five years, otherwise why would this be in a different part of the statute than in Schedule 5 where it is setting out aftercare periods. Thus, the Council consider that it can prescribe an alternative aftercare period, and that this can be longer than five years, and this approach is supported by the Planning Practice Guidance (PPG) Paragraph: 052 Reference ID: 27-052-20140306: "*the mineral planning authority cannot require any steps to be taken after the end of a 5 year aftercare period without the agreement of the minerals operator".* The PPG does not appear to provide any further guidance as to what form this agreement should take. In this instance, the appellant has agreed to the 30 year aftercare period in writing as part of the determination of the planning application, and to the draft schedule of conditions that form part of this appeal.

The Council consider that the permission would run with the land, therefore, this would have the effect of binding other future operators should they wish to purchase the land / permission, similar in this respect to the operation of a Section 106 Agreement.

No, as the permission would run with the land.

Notwithstanding the above, should the Inspector disagree with the Council that the 30 year aftercare period can be secured via the imposition of a relevant condition, or have any doubt then it is noted that the appellant has volunteered a Unilateral Undertaking to legally secure this aftercare period, and the Council would be content for the 30 year aftercare period to be secured by this mechanism.