

Appellant's Note on Securing the Duration of Public Access Routes

1. As requested by the Inspector at the Inquiry on Friday 15th November, this note sets out the Appellant's position as to provisions for securing the proposed public access routes.
2. The proposed routes are shown on the Concept Restoration Plan (CD15.23 and CD5.11) and are to be shown on the concept restoration scheme required by Condition 46. As confirmed by Mr Toland in oral evidence, it is proposed that all the proposed routes (i.e. those shown on the Concept Restoration Plan as 'proposed PROW (Bridleway),' 'proposed as upgraded PROW from Footpath to Bridleway' and 'Proposed Permissive Bridleway') would be provided and maintained for public use in perpetuity, whether by the Appellant/Owner or by agreement with the Council under section 25 Highways Act 1980.
3. Conditions 20 and 21 (as amended) seek to achieve this as explained by Mr Aldridge on behalf of the Council (rID73, p.6 and rID111, p. 1 – 2).
4. However, because a minerals permission is for a temporary period, there is some doubt as to whether Conditions 20 and 21 could apply and be enforceable beyond the 11 years duration of the development (see *Avon Estates Limited v. Welsh Ministers* [2011] EWCA Civ 553, at paras 28 to 29 - attached).
5. The Appellant's view is that the provision and maintenance of the proposed public access routes is intrinsically related to the concept restoration scheme (including by providing public access to the proposed pocket parks). As such, a requirement for the provision and maintenance of the routes is (i) necessary to make the development acceptable in planning terms, (ii) directly related to the development, and (iii) fairly and reasonably related in scale and kind to the development. This means that a planning obligation that includes a requirement for the provision and maintenance of the access routes for a longer duration than the development itself would be compliant with regulation 122 of the Community Infrastructure Regulations 2010.
6. The proposed draft Unilateral Undertaking ("UU") includes an obligation for a Landscape and Ecological Management Plan (LEMP) to be submitted, approved and

thereafter complied with. The LEMP is required to include for the provision and maintenance of the proposed public access routes (see para 2(ii), (v) and (vii) of Schedule 1 to the UU).

7. As currently drafted these provisions would ensure that the proposed access routes are provided, maintained and kept available for public use in perpetuity¹. However, the draft UU is severable (see Clauses 1.10 and 1.11). This means that there is the option for the ‘in perpetuity’ requirement to fall away (without affecting the enforceability of the remaining provisions of the UU) should the Inspector consider it unnecessary or otherwise non-compliant with the provisions of regulation 122 of the Community Infrastructure.

18 November 2024

¹ For the avoidance of doubt, this is expressly permissible under s.106(2)(b)