Worcestershire County Council's Response to Inspector's without-prejudice queries regarding suggested planning conditions
2024.11.11

Question 1) *Throughout suggested conditions should reference be to 'development hereby permitted' not 'approved'? Some conditions refer to features being 'kept available and maintained' – should that be something like 'retained and kept available'?*

Agree that where relevant the conditions should be amended to include the wording *"development hereby permitted"* rather than *"development hereby approved".*

Agree, the reference to *"kept available and maintained"* should be amended to *"retained and kept available".*

Question 2) Condition 4 *approved plans: last bullet 'Preliminary Design Layout'. Is a preliminary design sufficient detail for an enforceable condition?*

During the course of the consideration of the planning application, County Highways were asked by the Mineral Planning Authority whether they required a specific condition requiring the details of the access for approval, noting that the condition recommended by County Highways required the development to be carried out in accordance with the plan titled: 'Proposed Site Access Preliminary Design Layout'. County Highways confirmed they were content with the conditions they recommended and that they were content with the level of detail provided at the application stage, stating:

"The condition we have included is largely standard practice. It is usual that the access or scheme is drawn to a preliminary standard for an application submission, but then all schemes need to go through detailed design afterwards. For the application stage, it is the principle of the scheme and layout / form that is agreed. At detailed design, the layout and form of the scheme / access should then largely remain unchanged, but additional details considered, such as dropped kerbs, tactiles, materials used, signage, etc. It is an acceptable means for comments raised in a RSA to be addressed at a detail design stage, subject to them physically being possible to implement.

After our conditions, we normally include a series of informative, some of which refer to detailed design or technical approval. See below.

Section 278 Agreement

The granting of this planning permission does not remove any obligations on the applicant to undertake a technical design check of the proposed highway works with the Highway Authority, nor does it confirm acceptance of the proposal by the Highway Authority until that design check process has been concluded. Upon the satisfactory completion of the technical check the design would be suitable to allow conditions imposed under this permission to be discharged, but works to the public highway cannot take place until a legal agreement under Section 278 of the Highways Act 1980 has been entered into and the applicant has complied with the requirements of the Traffic Management Act 2004. The applicant is urged to engage with the Highway Authority as early as possible to ensure that the approval process is started in a timely manner to achieve delivery of the highway works in accordance with the above mentioned conditions. The applicant should be aware of the term "highway works" being inclusive of, but not limited to, the proposed junction arrangement, street lighting, structures and any necessary traffic regulation orders.

I don't believe any changes are needed to the condition on this basis".

Thus, County Highways were satisfied with the Preliminary Design Layout Plan, as they considered that the layout and form of the junction would remain unchanged, and matters such as dropped kerbs, tactiles, materials used, signage would be controlled by a Section 278 Agreement. Hence the plan is listed in condition 4.

It is noted that condition 4 states *"except where otherwise stipulated by conditions attached to this permission*" and condition 13 (see Re-determination Inquiry Documents rID9 and rID10) requires details and specification of the haul road and vehicular access. In view of this, the County Council consider reference to the plan is acceptable, however, should the Inspector disagree, then the Council would have no objections to this plan being removed from condition 4, given the requirements of proposed condition 13.

Question 3) Condition 6 *waste acceptance: should this refer to 'inert material' to be consistent with the description of the proposed development?*
The Council consider that construction, demolition and excavation wastes, by their nature are inert wastes, but the County would be content for the condition to be amended to refer to inert material to be consistent with the description of the development, namely:

No waste materials other than those defined in the application, namely inert materials shall be imported to the site for infilling and restoration purposes.

Question 4) Condition 9 *working hours: check punctuation to ensure construction works is subject to working hours and not another exception?*

Noted, suggested amended condition as follows:

Construction works and site set up; the working and processing of minerals and their transportation from the site; soils stripping, replacement and handling; the transportation of imported inert materials; infilling operations and site restoration; loading and unloading; and servicing, maintenance or repair of any plant and machinery, shall only take place between 08:00 to 18:00 hours Mondays to Fridays, inclusive, and 08:00 to 13:00 hours on Saturdays, with no operations on the site at any time on Sundays, Bank or Public Holidays. ***Work outside of the hours specified above shall be limited to that necessary in cases of emergency involving situations that could be prejudicial to safety or public health.*** *The Mineral Planning Authority shall be informed in writing within 48 hours of an emergency occurrence that would cause working outside the stipulated hours.*

Question 5) Condition 13 *is 'no operations' intended when other conditions refer to 'prior to commencement of soil stripping'*?

This condition has evolved over time following questions from the previous Inspector and comments from the Rule 6 Party and is now very different to what it was originally (see condition 13 in Core Document CD13.26). In view of this query, the Council recommended that this condition be amended as follows: *"No soil stripping operations*

shall take place within the Initial Works Phase, as shown on drawing numbered: 4A, reference number: KD.LCF.013A, titled: 'Proposals Plan', dated July 2021, until…".

***Question 6) Condition 14** requires a scheme for 'construction' to be approved, but some of the requirements relate to management and maintenance not just construction?*

Thank you and noted. Suggested amended condition wording as follows:

*"Notwithstanding the submitted details, prior to the commencement of soil stripping in Phase 1, as shown on drawing numbered: 4A, reference: KD.LCF.013A, titled: 'Proposals Plan', dated July 2021, a scheme for the construction**, management and maintenance** of the below ground conveyor and associated conveyor tunnel / underpass, as shown on drawing numbered: 9A, reference number: KD.LCF.004A, titled: 'Phase 1 – Working & Restoration', dated July 2021,shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include the design, dimensions, materials, surfacing, construction specification, location shown on a plan, measures to minimise noise and vibration, maintenance arrangements, and a timetable for its removal and restoration specification, Bridleway WC-626 temporary diversion arrangements during its installation and removal, temporary construction / decommissioning access arrangements, and details of signage to alert users of the Bridleway to presence of the below ground conveyor. The development shall be carried out in accordance with the approved details, and shall be retained and **kept available** as such thereafter".*

***Question 7) Condition 19** ii would it be necessary for all HGVs to use wheel wash when exiting onto the public highway? iv how would this turning movement on the public highway be enforced? vi How would this be enforced if not all HGVs were the operators?*

With respect to condition 19, part ii, this requires details of when the wheel washing facility would be used. The Council would expect all HGVs to use the wheel wash, however, the wording of this condition provides sufficient flexibility for the appellant to set out the parameters of any scenarios when HGVs would not use the wheel wash (should there be any), and this to be scrutinized by the Mineral Planning Authority in consultation

with the Highway Authority. Notwithstanding this, the Council are content for condition 19, part ii to be amended as set out below, should the Inspector consider it necessary:

ii. Details of a wheel washing facility, including its location, water supply, water storage, recycling and disposal, ***and*** *maintenance arrangements.* ***HGVs shall not enter the public highway unless their wheels and chassis have been cleaned in the wheel wash to prevent materials being deposited on the highway.***

With respect to condition 19, part iv, this condition has evolved over time following questions from the previous Inspector and comments from the Rule 6 Party, and is now very different to what it was originally (see condition 23 in Core Document CD13.26). The Council note that the proposed access is designed as such that it would be practically impossible for a HGV to turn right out of the site, or left into the site, without physically mounting kerbing and islands. The Council consider it would not be able to enforce requiring HGVs to turn left into the site access when entering, given that would be outside of the red line application boundary. In view of this, it is suggested that part iv is deleted, and part v is amended to state:

v. ***No HGVs shall turn right when exiting the site.*** *Details of signage requiring all HGVs to turn left onto Wolverley Road (B4189) along with the siting of the signage close to the site exit, and a programme for its installation and maintenance; and*

With respect to condition 19, part vi, again this came out of the roundtable discussion led by the previous Inspector. The Council's understanding is that all HGVs exporting minerals and importing inert waste would be under the control of the applicant. However, the Council appreciates that any permission would run with the land, and thus suggest the following amended wording:

All HGVs owned or under the direct control of the operator *used for export of minerals or the importation of inert materials to and from the site, shall be fitted with Global Positioning System (GPS) tracking equipment, and this tracking information shall be recorded and made available to the Mineral Planning Authority within 7 days of a written request. All such records shall be kept for at least 12 months from the date they were recorded.*

Question 8) Condition 20 *can a planning condition require dedication of a PRoW by an agreement under s25 of Highways Act? How would Conditions 20 and 21 apply together re proposed public rights of way?*

This condition is based partly on condition 16 of the appeal made by RJD Ltd and Gowling WLG Trust Corporation Limited Lan at Ware Park, Wadesmill Road, Hertford (see Core Document CD12.39). The intention of this condition is not to require dedication of formal public rights of way by the appellant entering into an agreement under Section 25 of the Highways Act, but rather for them to provide and construct the rights of way as proposed in the application submission, and maintain them as such until a time they are formal public rights of way, as this is a key benefit of the scheme, and in weighed in the balance, in any decision. The appellant may never apply to dedicate the rights of way under formal agreement, and the condition allows for this. The reference to a dedication agreement (under Section 25 Highways Act 1980) is describing that the condition would fall away if there was a voluntary formal dedication. The reference to public rights of way is referring to their description as shown on drawing: L & R Figure 5A, Ref: KD.LCF.026A titled: 'Current & Proposed Public Rights of Way', dated July 2021 (see Core Document CD5.14). Should this phrase be causing any concern, then it could be rephrased as 'public access routes' to indicate their legal status (although some of the routes are formal public rights of way and are proposed to be widened etc).

Condition 20 deals with the routes proposed to be become formal public rights of way by the appellant, see drawing: L & R Figure 5A, Ref: KD.LCF.026A titled: 'Current & Proposed Public Rights of Way', dated July 2021 (Core Document CD5.14). Condition 21 seeks to deal with the routes that are proposed as permissive by the appellant. The condition was split into two separate conditions on the advice of the County Footpath Officer to make the above distinction.

Question 9) Condition 24 *lighting: should i include siting and height of lights? Would the exception provided by a 'prior consent' be appropriate?*

Noted and agreed, condition 24, part i should be amended to include siting: *"i. Siting and height of lights;".*

The reference to: *"Under no circumstances shall any other external lighting be installed without prior consent from the Mineral Planning Authority"* came out of the roundtable discussion on conditions led by the previous Planning Inspector. The Council would prefer that should planning permission be granted, that any amendments to approved schemes are via Section 96A or Section 73 of the Town and Country Planning Act 1990 (as amended), as appropriate; and thus, concur that there is no need for this tailpiece, and it should be removed.

Question 10) Condition 26 *water environment: i would the additional monitoring points need to be approved? iii would it be necessary to include provision for reporting along with monitoring requirement? vi who would decide if the 'adverse impact/risk of deterioration' was both attributable to the development and sufficiently serious to warrant cessation of extraction?*

With regard to condition 26 part i, in reference to the wording *"Additional monitoring points will be required to monitor the soakaway ponds post restoration".* This requirement is taken from the Environment Agency's comments and recommended condition (see Core Document CD2.34). The Council consider that the additional monitoring points would require approval. In view of this, it is recommended that the condition is amended as follows:

i. Pre-commencement, operational (extraction phase) and post extraction monitoring, of the existing onsite monitoring boreholes identified in Environmental Statement Volume 2 – Technical Appendices – Appendix I: Water Resources;

ii. The details and location of the additional monitoring points required to monitor the soakaway ponds post restoration;

iii*. Method and nature of sampling / measurement of groundwater, surface water and quality;*

With regard to the query relating to condition 25 part iii (as is currently), this is noted, and the condition is recommended to be updated as follows:

*A programme detailing frequency and duration of monitoring, **and reporting to the Mineral Planning Authority**, along with details of how and when the monitoring data and the Scheme itself shall be reviewed to assess if impacts (if any) are occurring;*

With regard to condition 26 part vi, it would ultimately be the Mineral Planning Authority, but in consultation with, and upon the advice of the Environment Agency.

***Question 11) Condition 28** would it be sufficient just to 'minimise the possibility of contaminant spillage' rather than prevent it?*

Thank you and noted, the condition is recommended to be updated as follows:

*Prior to the commencement of the development hereby approved, a scheme containing details of measures and equipment to **prevent** the possibility of contaminant spillage or leakage during the storage, filling of fixed tanks and mobile plant, and the movement of oils, fuels, lubricants and chemicals to, from and around the site, shall be submitted to and approved in writing by the Mineral Planning Authority. The scheme shall also include details about measures and equipment to deal with any spillages or leakages of contaminants, so as to **prevent** any pollution risk to ground and surface water. Thereafter, the approved scheme shall be implemented in full for the duration of the development.*

***Question 12) Condition 29** noise and vibration: check punctuation and issue of vehicles not in the control of operator?*

Thank you and noted, the condition is recommended to be amended as follows:

*i. Noise and vibration mitigation measures and best practice measures, which shall include but not limited to**,** all internal roads shall be maintained such that their surface remains free of potholes or other defects; and all mobile plant, machinery and vehicles (excluding delivery vehicles which are not owned or under the direct control of the operator**, but not excluding inert waste delivery vehicles**) used on the site shall incorporate white noise reversing warning devices;*

Question 14) Condition 31 *does 'such operations' in the last sentence refer to just operations that would exceed the levels set out in Condition 30 for the purposes of applying the 8 weeks provision?*

Yes, such operations refer to operations / works described at the beginning of the condition, namely *"during the removal of soils and superficial deposits and the creation of any screen bunds or restoration works",* which would exceed the levels set out in condition 30 for the purposes of applying the 8-week provision. Noting the Inspector's comments, it is recommended that condition 31 is amended as follows:

During the removal of soils and superficial deposits and the creation of any screen bunds or restoration works, the noise limit at the receptor locations identified in the Noise Assessment Report, dated 12 September 2019 shall ***be permitted to exceed the limits set out in Condition 30 for a period of up to 8 weeks in any calendar year but during that period shall*** *not exceed 70dB LAeq 1-hour (free field). Prior written notice of at least 5 working days, being Mondays to Fridays inclusive, shall be given to the Mineral Planning Authority of the commencement and the duration of such operations.*

Question 15) Condition 32 *dust: v. would it be necessary to set dust limits as part of this condition rather than leave for later approval given the basis upon which dust would have been determined in any grant of planning permission ? The last paragraph of this condition includes the terms 'if required', 'regular', 'accordingly' and 'agreed' which would not provide the necessary precision for an enforceable condition ?*

With regard to the requirement to set dust limits this came out of the roundtable discussion led by the previous Inspector. The Council requested a response from the appellant for Worcestershire Regulatory Services to review and comment on.

Katrina Hawkins on behalf of the appellant has stated that:

"Actual dust levels at receptors are not predicted through the assessment carried out and there are no numerical limits used to determine a conclusion of no significant adverse effects. Furthermore there are no legal or recommended deposition dust limits, purely frequently used 'custom and practice' thresholds. It's very unlike specific air pollutants or noise. The historical typical custom and practice threshold for dust

deposition was 200 mg/m2/day. This is still frequently used although on occasion a lower threshold of 140 mg/m2/day is used. Given the nature of the appeal etc I've referred to this lower value for where near receptors [see separate Draft Dust Monitoring Proposals]. *A key factor however is that any dust event should be picked up as part of day to day operations and this monitoring is more of importance review for long-term trends, responding to complaints etc.*

I have attached some text later on suggested monitoring methodology, trigger limits etc for WRS [Worcestershire Regulatory Services].

With regards to the wording of the condition itself it would be probably better to say something along the lines of:

- *'Set trigger limits for investigation and action' (or similar) rather than specifically 'set dust limits'*

This is partly because typical fugitive dust monitoring is not 'real-time' and hence is only reviewed retrospectively. Making it difficult to be applied as set limits as such. Real-time options are available but have various draw backs.

It would be extremely unusual to set any such trigger limits in an actual condition. I can't think of any examples where that has been the case. Not least because the 'limits' have to take into account the monitoring methodology, as well as location of a monitoring point and how representative it is of a receptor. Plus it would be normal to carry out a period of baseline monitoring (pre-commencement) and any trigger limits would typically take the results of baseline monitoring into account.

Notwithstanding the above we can provide some recommendations on monitoring methodology, trigger limits etc for WRS, but as above don't believe these should be written into the permission per se".

Worcestershire Regulatory Services have commented on the above stating that "*the proposed continuous dust monitoring methodology appears acceptable, and I would agree with the appellant's suggested condition wording which does not include specific trigger limits. Any dis-amenity episodes should be dealt with under the Dust*

Management Plan and not have to wait for the results of the continuous dust monitoring exercises for any appropriate mitigation action to be taken".

In view of the above, the Council consider the condition should be amended as follows:

31) Notwithstanding the submitted details, prior to the commencement of the development hereby approved, a Dust Management Plan to include onsite and offsite dust monitoring shall be submitted to and approved in writing by the Mineral Planning Authority. The Dust Management Plan shall be based upon Section 3.0 and Appendix 3 of the Dust Impact Assessment, dated 18 September 2019, Ref: R19.10059/3/AG, and shall follow the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Mineral Dust Impacts for Planning' (2016), set out and require compliance with the good practice mitigation measures set out in Tables 4 and 5 of the IAQM Guidance for both site design and planning and operational control. The Dust Management Plan shall include:

i. *Details of the dust monitoring equipment to be used;*
ii. *Location of dust monitoring equipment;*
iii. *Frequency of dust monitoring;*
iv. *Methodology to be used for assessing the dust monitoring results;*
v. ***Set trigger limits for investigation and action;***
vi. *Provision and timescales for the reporting of the dust monitoring results to the Mineral Planning Authority;*
vii. *Additional dust mitigation measures and timescales for their implementation if the dust monitoring shows an exceedance of dust limits; and*
viii. *Dust suppression measures to be employed, including but not limited to the provision of a water bowser and spraying units which shall be used at all times when there is a risk of dust arising from operations at the site, road sweeper to be utilised during dry conditions or upon request of the Mineral Planning Authority; drop heights for material transfer (between plant, ground and transport) should be minimised, all plant vehicles shall have upward facing exhausts to ensure that emissions are directed away from the ground; and there shall be a maximum speed limit of 10mph within the site.*

With regard to condition 32, the last paragraph of this condition is based partly on condition 34 of the appeal made by RJD Ltd and Gowling WLG Trust Corporation Limited Lan at Ware Park, Wadesmill Road, Hertford (see Core Document CD12.39). The purpose of which was to acknowledge that the proposed development would take place over 11 years, and best practice changes over time. However, comments are noted, and the last paragraph is suggested to be amended to only state:

Thereafter, the development shall be carried out in accordance with the approved Plan.

Question 16) Condition 34 *would this require a timetable for implementation?*

Noted and agreed. The condition is recommended to be amended as follows:

iv. Details of the location and how the bricks from the historic boundary wall will be securely stored to prevent deterioration due to water ingress and frost damage;
v. The method and construction specification of the reinstatement of the historic boundary wall to match its appearance prior to removal; ***and***
vi. A timetable for its implementation.

Question 17) Condition 35 *would it be necessary to specify where the height was measured from given changes in the level of the site during the phased development?*

Noted, the condition is recommended to be amended as follows:

The height of any stockpiles of sand and gravel and inert waste material shall not exceed 5 metres, **above adjacent ground**.

Question 18) Condition 39 *would the exception apply to all operations on site as it is not clear what operations would not be permitted?*

Noted, the permitted operations are referring to the soil stripping and soil replacement operations. Condition recommended to be amended as follows:

*No plant or vehicles shall cross any area of unstripped **top**soil or subsoil, except **for the express purpose of soil stripping or soil replacement operations.** Essential traffic routes shall be marked in such a manner as to give effect to this condition. No part of the site shall be excavated, traversed or used as a road for the stationing of plant or buildings or for the storage of subsoil, overburden, waste or mineral deposits, until all available topsoil **and subsoil** has been stripped from that part. The exceptions are that topsoil may be stored on like topsoil and subsoil may be stored on like subsoil.*

***Question 19) Condition 46** restoration: would it be necessary re 1990 Act Sched 5 pt2 (1) to specify use agriculture/forestry/amenity given that plan cited is 'concept restoration'?*

Whilst the Plan is titled: 'Concept Restoration', it is considered to be acceptable, and of sufficient detail, apart from being updated to take account of the retention of trees T9 and T10. Notwithstanding this, the condition is recommended to be amended as follows:

*Notwithstanding the submitted details, prior to the commencement of the development hereby approved, a detailed restoration scheme for the site for **agriculture and nature conservation**, based on drawing numbered: 01-LEACF-INQ_011, titled: 'Concept Restoration', dated July 2024, but updated to take account of the retention of trees T9 and T10 as shown on drawing numbered: TS71-004, titled: 'Tree Protection & Removal Plan 2', dated May 2019 in the Environmental Statement Volume 2 'Technical Appendix C – Arboriculture', shall be submitted to the Mineral Planning Authority for approval in writing. The detailed restoration scheme shall include final contour levels, with all levels related to Ordnance Datum. Thereafter, the development shall be carried out in accordance with the approved scheme.*

***Question 20) Condition 47** would it be necessary for the operator to give MPA notice in writing of cessation of operations so that the 12 month period was not in dispute? Would last sentence re revised timescale be appropriate?*

Noted, the condition is recommended to be updated as follows:

*In the event that the winning and working of minerals or waste infilling from the site cease**, then the Mineral Planning Authority shall be notified in writing within 1***

month of the date of such cessation. Should this cessation extend *for a period in excess of 12 months prior to the achievement of the completion of the approved restoration scheme referred to in Condition 46) of this permission, then within 3 months of the receipt of a written request from the Mineral Planning Authority, a revised scheme, to include details of restoration and aftercare, shall be submitted to the Mineral Planning Authority for approval in writing. The revised scheme shall be fully implemented within 12 months of its approval in writing by the Mineral Planning Authority.*

Noted and agreed, the last sentence "*or such revised timescale as shall be determined by the Mineral Planning Authority"* should be deleted from the proposed condition (as above).

Question 21) Condition 48 *aftercare: 'approved' not 'agreed'? How would 30 year aftercare square with 1990 Act Schedule 5 part 2 reference to 5 years unless prescribed?*

Noted and agreed, the word *"agreed"* should be substituted with *"approved".*
With respect to the 30-year aftercare scheme, this 30-year period is required in the Biodiversity Enhancement, Monitoring and Management Plan (BEMMP) – condition 42; Landscape and Ecological Management Plan (LEMP) – condition 43; and the Aftercare Management Plan – condition 48 (see Re-determination Inquiry Documents rID9 and rID10).

The rational for a 30-year aftercare period required by condition rather than a Section 106 Agreement is set out below.

The Council's approach to conditions / Section 106 Agreements has been a condition first approach. If the Council could impose a condition, rather than enter into a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) then the Council have done so. This approach is supported by the Planning Practice Guidance (PPG) at Paragraph: 011 Reference ID: 21a-011-20140306, which states:

"What approach should be taken where the same objective can be met using either a condition or a planning obligation?

It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.
Paragraph: 011 Reference ID: 21a-011-20140306
Revision date: 06 03 2014"

It is also noted that Schedule 5 of the Town and Country Planning Act 1990 (as amended) deals with conditions for mineral working.

Schedule 5, Part 1, Paragraph 2 (7) states that:

"..."the aftercare period" means a period of five years from compliance with restoration conditions ***or such other maximum period*** [my emphasis] *after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part"* [my emphasis].

Schedule 5, Part 1, Paragraph 2 (8) states that:

"The power to prescribe maximum periods conferred by sub-paragraph (7) includes ***power to prescribe maximum periods differing according to the use specified"*** [my emphasis].

The PPG states the following:

*"**What are the limitations imposed on aftercare conditions?***
There are several limitations imposed on aftercare conditions, as follows:

- *they may only be imposed on permissions in conjunction with a restoration condition;*
- *they may only be imposed in relation to land which is to be used for agriculture, forestry or amenity (including biodiversity) following minerals working;*
- *they can require only planting, cultivating, fertilising, watering, draining or otherwise treating the land;*

- *they can only start following compliance with a restoration condition and **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*** [my emphasis] *(Schedule 5 of the Town and Country Planning Act 1990 sets out the conditions relating to mineral working).*

Paragraph: 052 Reference ID: 27-052-20140306
Revision date: 06 03 2014

The rational for the 30-year aftercare period is based on the appellant's subjection for achieving the goal restoration standard, noting that tree planting / woodland blocks is proposed, and was requested by a number of consultees, including the County Ecologist. The appellant agreed to this 30-year aftercare period in writing during the application process and by signing up the agreed conditions as part of the appeal, thus it is considered the Mineral Planning Authority have agreed to extend the statutory 5-year aftercare period with the mineral operator, meeting the above requirements.

In view of the above, the Council consider that the 30-year aftercare period can be dealt with by condition.

***Question 22) Condition 52** removal of pd rights: 'without the approval of the MPA' appropriate?*

From a review of planning appeal decisions, it is noted that often the wording or similar wording to *"without the approval of the Mineral Planning Authority"* is often used for conditions seeking to remove or restrict permitted development rights. However, the Council acknowledge this creates an element of uncertainty and also acknowledge the case law in relation to the use of tailpieces such as *"unless otherwise approved in writing by the Local Planning Authority"* (such as R (Midcounties Co-operative Ltd) v Wyre Forest [2009] EWHC 964 (Admin); Sienkiewicz v South Somerset District Council v Probiotics International Ltd [2015] EWHC 3704 (Admin); and R (Butler) v East Dorset District Council v Good Energy Mapperton Farm Solar Park (007) Ltd [2016] EWHC 1527 (Admin)). In view of this, the condition is proposed to be amended as follows:

Notwithstanding the provisions of Class L of Part 7 and Class A and Class B of Part 17 of Schedule 2 of The Town and Country Planning (General Permitted Development)

(England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), ***planning permission shall be sought and obtained from the Mineral Planning Authority prior to*** *any fixed or mobile plant, machinery, buildings, structures, erections or private ways* ***being*** *erected, extended, installed, rearranged, replaced or altered within the site,* ***other than those for which permission has been granted under this permission****.*