

Agenda Item No 11a

Planning and Development Board

5 February 2018

**Report of the
Head of Development Control**

Daw Mill Update

1 Summary

- 1.1 The report gives consideration to a late development in respect of the Daw Mill Planning Inquiry and considers the Council's response.

Recommendation to the Board

That the Board confirms the letter referred to below as forwarded to the Secretary of State.

2 Background

- 2.1 The Public Inquiry into the proposals at Daw Mill was held last year. The Inspector has completed her report and this is now with the Secretary of State. The Inspectorate had written to all parties to indicate that his decision was anticipated before 7 March.

3 Further Matters

- 3.1 Just after the publication of the report for the 5th February Planning Board meeting, the Council received a letter on behalf of the Secretary of State explaining that the date of a decision would be put back to 21 March. The reason for this extension was that he had received a Statement signed by Craig Tracey MP and Marcus Jones MP which he considered should be circulated to all parties for comments, such that he had a full picture from all sides.

- ... 3.2 A copy of this Statement is attached at Appendix A. It includes a number of Appendices. Please note that some of the appendices date back to 1942 and are of poor quality.

- ... 3.3 The Council has been invited to submit comments before 1 February. In view of this date being prior to the date of this Board and the significance of the Statement, officers have discussed it with the Chairman of the Board, such that a response has been forwarded to the Secretary of State. The Chairman has agreed to this additional report being brought to this Board as a consequence. The response is attached at Appendix B.

4 Observations

- 4.1 The MP's Statement expresses a number of concerns about the closing submission of the appellant which they consider contains "factual inaccuracies". In summary they refer to the appellant's position on the acquisition of the site; his position on the interest of Cemex in the site, the validity of the restoration scheme, the position in respect of coal reserves at the site prior to 1947 and the position he expresses in respect of the highway evidence.
- 4.2 Officers have considered this and take the view that the matters raised by the two MP's have already been presented to the Inspector at the Inquiry by the Rule 6 Party and the appellant. As such they were the subject of substantial cross-examination at that time. The Council did not submit evidence on these matters as it was agreed that the Rule 6 Party would lead on these issues, but it did respond to the evidence as submitted to the Inquiry by the other parties.
- 4.3 Additionally, closing submissions will to some degree inevitably provide a party's view on the evidence heard at an Inquiry. Crucially the determination will rest on the weight that the decision maker gives to the evidence, not to the closing submission.
- 4.4 It is in these circumstances that the response to the Secretary of State's invitation to comment on the MP's Statement has been considered.

The Contact Officer for this report is Jeff Brown (719310).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
1	MHCLG	Letter	25.01.18
2	Head of DC	Letter	29.01.18



Ministry of Housing,
Communities &
Local Government

Mary Tsang
Gateley plc
Ship Canal House
98 King Street
MANCHESTER
M2 4WU

Our Ref: APP/R3705/W/16/3149827

25 January 2018

Sent by email only

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY HARWORTH ESTATES
LAND AT DAW MILL COLLIERY, DAW MILL LANE, ARLEY
APPLICATION REF: PAP/2014/0339**

1. The Secretary of State is considering the report of the Inspector, Frances Mahoney DipTP PGDipTP MRTPI IHBC who held a public local inquiry from 21 February 2017 into the above appeal.
2. The Secretary of State takes the view that the attached statement from Craig Tracey MP and Marcus Jones MP, together with the appendices, includes new information which may be material to the appeal before him.
3. The purpose of this letter is to ensure that you are aware of this new material, and have the opportunity to submit written representations if you consider that it affects the case you put to the Inspector at the inquiry.
4. The Secretary of State considers that a period of 1 week to submit representations is reasonable in the circumstances of this case. You are therefore asked to submit any representations you wish to make by email to **pcc@communities.gsi.gov.uk** by 1 February 2018.
5. Please note that representations are invited on this issue to enable the Secretary of State to come to a fully informed decision, and this letter should not be read as any indication of his attitude to the appeal scheme. Comments should be confined to the matters arising from this new material and should not seek to raise any other matters.

Richard Watson, Decision Officer
Ministry of Housing Communities & Local Government
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel 0303 444 1627
pcc@communities.gsi.gov.uk

6. The Secretary of State will circulate any responses he receives as a result of the above invitation, and will give parties a further week in which to make any further comments arising from the responses.

Variation of timetable

7. The Secretary of State considers that he will not be in a position to reach a decision on the above appeal by 7 March 2018, as previously notified, because of the need to allow parties time to consider the matter set out above. Therefore, in exercise of the power conferred on him by paragraph 6(2) of Schedule 2 to the Planning and Compulsory Purchase Act 2004, the Secretary of State hereby gives notice that he has varied the timetable for his decision which was previously set, and he will now issue his decision on or before 21 March 2018.
8. A copy of this letter is also being sent to North Warwickshire Borough Council and LAWRAF & Over Whitacre Parish Council and is being copied to Craig Tracey MP and Marcus Jones MP. If these parties wish to submit comments in response to this letter and enclosures, they should do so within the timescale set out above.

Yours faithfully

Richard Watson

Authorised by Secretary of State to sign in that behalf



Statement by Craig Tracey MP and Marcus Jones MP

Daw Mill former Colliery, Daw Mill Lane, Arley, Warwickshire CV7 8HS

Planning appeal: APP/R3705/W/16/3149827

Background:

The Planning Inspectorate held a ten day hearing on the proposed redevelopment of the former Daw Mill Colliery site in May 2017 by the appellant, Harworth Estates. The Inspector submitted her report on the appeal to the Secretary of State on 20th September along with the closing submissions of North Warwickshire Borough Council, the Rule 6 Party and Harworth Estates.

The Rule 6 Party, which represents Lawrag (an association of local residents) and Over Whitacre Parish Council, have approached us as they have a number of concerns about the closing submission made by Harworth Estates. Due to family illness Harworth Estates' barrister, Mr Andrew Fraser-Urquhart QC, was unable to present his submission to the hearing in person and a written closing submission was entered by Harworth Estates.

The Rule 6 Party consider that Harworth Estates' closing submission contains a number of factual inaccuracies and, as this is one of the documents which is to be presented to the Secretary of State to enable him to make a decision in this case, they would like to bring these inaccuracies to his attention.

Interest of CEMEX in the site:

On p.14 of his closing submission, Mr Fraser-Urquhart states that, 'A letter was submitted by CEMEX to indocate [sic] their ongoing interest in the site; Lawrag made an ill-conceived attempt to criticise that letter on the basis of the fact that the commercial arrangements for shadow [sic] in it were not certain. However, that is a common feature of all pre-permission interest from commercial operators and does not detract from the force of the letter. Law rag [sic] also attempted to cast doubt on Mr Clarke's evidence by referring to other sites in the appellants [sic] ownership. In fact, these were sites which are suitable for much higher value strategic Railfreight interchanges. Mr Clarke had considered, and discarded those at the early stages of the exercise he set out in his proof of evidence.'

The Rule 6 Party submitted a letter to the Planning Inspector on 13th May 2017 which is appended to this document (Appendix 1) and addresses the issue of CEMEX's interest in the Daw Mill site. They argue that the submission of Mr Fraser-Urquhart is misleading on this point for the following reasons:

1. Network Rail have confirmed in writing to the Rule 6 Party that the tender for the concrete manufacturing facility to which CEMEX and the appellant refer has not yet been awarded. Further, the tender requires that the successful contractor use Network Rail's established manufacturing and supply base located at Bescot.
2. The appellant has a number of other sites which would be more suitable for the commercial activities described in their submission. The Rule 6 Party do not believe that Mr Fraser-Urquhart's dismissal of the other sites owned by Harworth Estates gives adequate explanation of why they would not be suitable alternatives for the commercial activities the appellant wishes to bring to the Daw Mill site.



3. CEMEX also refer to their desire to supply HS2, however HS2 already have permission for a temporary rail served supply depot at Kingsbury Railhead. This has direct access to Junction 9 of the M42 and is served by the Derby to Birmingham rail line. The Daw Mill site is on the Leicester to Birmingham line.

The Rule 6 Party contest that the above points are indicative of a potential interest by CEMEX in the Daw Mill site, based upon speculation of future commercial activity, rather than a demonstration of a 'concrete' need for a site in this location to support regional and national infrastructure projects as the appellant argues. They consider that this point has a strong bearing upon the question of whether the proposal demonstrates the, 'exceptional circumstances,' needed to justify greenbelt development in the National Planning Policy Framework.

Original Purchase of the Daw Mill Site

The appellant's closing statement p.16 states that, '*...The repeated references by, in particular, law rag [sic], but also in the prejudicial observations in the Council's closing submissions, as to the price apparently paid by the appellant to acquire the site and its (presumed) understanding of the position with respect to restoration, are again wholly irrelevant. It is clear that the reliance by opposing parties upon those matters was purely intended to create prejudice against the appellant.*'

The Rule 6 Party consider that this point is key to their argument that the restoration scheme is valid. Mr Fraser-Urquhart refers to the '*price apparently paid by the appellant,*' the price paid by Harworth Estates to the Crown for the site was £5,000, this is a matter of public record.

Mr Fraser-Urquhart also refers to the '*presumed*' understanding of the position with regard to restoration. The Rule 6 Party have email evidence (Appendix 2) in which Owen Michaelson as Chief Executive of Harworth Estates states that, '*Harworth Estates is fully aware of the site conditions on the site and is "buying with knowledge" and understands the legal obligation to comply with the restoration obligations if the mineral planning consent is enforced by the mineral planning authority.*' Rather than seeking to prejudice the appellant, this evidence is a key part of the Rule 6 Party's argument that the obligations of the restoration scheme are valid and that this fact was acknowledged by Harworth Estates itself upon their purchase of the Daw Mill site.

Restoration Scheme

p.16 of the appellants' closing submission goes on to say that, '*d. Reference has been made throughout the inquiry to "the restoration scheme." In fact, all that has been approved is outline restoration scheme [sic] which sets out, in the broadest terms, the framework for a more detailed restoration scheme which never has been agreed and does not exist even in any draft form.*'

The Rule 6 Party have provided evidence that the existing restoration scheme is indeed an outline scheme (Appendix 3). However the proposal was accepted, '*...subject to a final scheme being submitted 6 months prior to cessation of operations.*' Because Daw Mill closed abruptly as the result of a fire, this final scheme was not drawn up as planned. The Rule 6 Party consider that this does not absolve Harworth Estates of their obligation to comply with the condition to provide a detailed restoration scheme and links to Mr Fraser-Urquhart's further statement on p.27 of his closing submission:

'60. Furthermore, despite the fact that the colliery use has now been discontinued after four years, there has not been the slightest sign that the county council intends to take any steps to enforce a



restoration scheme. Given the nature of this inquiry process, it would have been an extremely simple step for the county council to give an indication that it intended to take enforcement action. It has never done so.'

The Rule 6 Party have evidence that when North Warwickshire Borough Council refused Harworth Estates Planning Application for the Daw Mill site in November 2015, Warwickshire County Council as Minerals Planning Authority wrote to Harworth to pursue the restoration of the site (Appendix 4). They also met representatives of Harworth on site in December 2015. Harworth Estates initially told the Council that they intended to pursue the development of a detailed restoration scheme in tandem with the appeal application. However, Harworth themselves later informed the Council that they had taken 'Legal Opinion' about the legality of the restoration condition. To say that, *'there has not been the slightest sign that the county council intends to take any steps to enforce a restoration scheme,'* is disingenuous at best when the delay in the enforcement of the scheme has been caused by the actions of the appellant themselves.

'61. Accordingly, there is no proper basis upon which the Inspector can conclude that there is a realistic possibility of the restoration scheme going ahead. Its role as a fallback [sic] position simply does not exist. As such, the proper basis for considering the evidence, even if the Inspector concludes that the land is not previously developed and the restoration scheme is enforceable, is to consider the effect of the scheme as against a baseline of the existing, despoiled state of the site.'

In light of Warwickshire County Council's actions to pursue the development of a detailed restoration scheme, The Rule 6 Party are very concerned that the appellant is so adamant that the restoration scheme does not exist as a fall-back position. They have informed us that they have been told that the Daw Mill site is owned by Harworth Estates Warwickshire Ltd, a shell company with no assets which will be put into liquidation if enforcement of the restoration scheme is pursued.

Given that Harworth Estates purchased the Daw Mill site for the sum of £5,000 in full knowledge of the restoration condition, the setting up of this shell company to enable Harworth to avoid these obligations seems particularly cynical, especially in light of the fact that they have reportedly sold materials and equipment from the site for around £2 million. The appellant's assertion that the restoration scheme is unrealistic would seem to be based on the assumption that Harworth will do everything in their power not to carry such a scheme out.

This case has the potential to set a very dangerous precedent with regard to current and future mineral extraction sites which could undermine public trust in the planning system. If communities in green belt areas are asked to accept mineral extraction in their vicinity on a temporary basis, cases such as this would make them rightly concerned. It would seem that Harworth Estates would like to renege on a commitment made to the people of the Daw Mill area by the mine operator many years ago by using planning technicalities and a shell company.

The Daw Mill site sits in the heart of the North Warwickshire Greenbelt. Paragraph 81 of the NPPF states that, *'Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities.... to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.'* Once mineral extraction has been completed the owners of such sites should be compelled to



comply with any restoration schemes in line with their obligations and the spirit of the greenbelt protection offered by the NPPF.

We would like further investigation to be carried out into the actions of Harworth Estates on this point. While the protection of company directors offered by the legislation regarding limited companies is essential to entrepreneurship, the use of these regulations to enable a wealthy company to avoid its obligations to the local community in a case like this should at least warrant further enquiry.

Highways

p. 56 of the appellant's closing summary goes on to say that, '*d. The extra-ordinary twist to this case, is that the very highways engineer who was primarily responsible for dealing with the entire consultation process at the County Council then appeared at this inquiry to take the precise opposite view and seek to persuade the Inspector and Secretary of State that the scheme is so deficient that permission should be refused on transport alone.*'

The Rule 6 Party contend that this is a factually inaccurate account of their Highways Engineer, Neil Bennison's actions. Neil Bennison left Warwickshire County Council in July 2015. The County Council's initial decision on the Daw Mill case was issued on 24th August 2015, this was an objection. The County Council eventually withdrew their objection to the scheme on Highways grounds, however, this was some considerable time after Neil Bennison had left the Authority. The claim that during the hearing Mr Bennison tried to, '*take the precise opposite view,*' to that which he had held whilst a Council Officer is false.

Knowledge of Coal Reserves at the Daw Mill Site Prior to 1947

We understand that Harworth Estates' case on the enforceability of the restoration clause is largely based upon the premise that Daw Mill never had planning permission. They claim that this is due to the fact that no one realised that there was coal at the site before the introduction of the Town and Country Planning Act in 1947. Local residents have given us a copy of a lease for the site dated 30th June 1942 to the Kingsbury Colliery for the purposes of coal mining. We have attached a copy of this for your information.

We trust that you will give due consideration to the points made above with regard to CEMX's Interest in the site, the statement made by the Chief Executive of Harworth Estates when the site was purchased, the validity of the restoration scheme including Harworth's use of a shell company, the misinformation regarding the work of the Highways Engineer, Neil Bennison and the evidence of knowledge of Coal reserves at the site prior to 1947. If you have any queries or require any further information, please do not hesitate to contact us.

Yours faithfully,

Craig Tracey MP
North Warwickshire and Bedworth

Marcus Jones MP
Nuneaton

Lawrag & Over Whitacre Parish Council
Leavings Mill Bank
Coleshill Road,
Furnace End,
Over Whitacre,
Warwickshire B46 2LG



Helen Skinner
The Planning Inspectorate,
Temple Quay House,
2 The Square,
Temple Quay, Bristol, BS1 6PN

Saturday, 13 May 2017

Dear Ms Skinner,

RE: Planning appeal: APP/R3705/W/16/3149827. Daw Mill Colliery Daw Mill lane Arley Warwickshire CV7 8HS

We have indirectly received a copy of a letter from Gateleys dated 8th May, which we understand they have submitted to you. We consider this to be new evidence submitted late. If the inspector is minded to depart from protocol and accept this letter as evidence we wish to make her aware of the following facts relating to its content:

Network Rail has confirmed to us in writing that the tender for the concrete sleeper manufacturing facility to which Cemex and the appellant refer to has not yet been awarded to any contractor.

The Tender requires the successful bidder to use a newly established manufacturing and supply depot based at Bescot. A site owed by Network Rail who are actively pursuing a Planning Application with Sandwell Borough Council. The application reference is DC/17/60506

In addition we wish to make the inspector aware that Hs2 have already used their special need to purchase and secure temporary permission for a rail served supply depot known as the Kingsbury Road railhead in the green belt close adjoining the Hams Hall development. This is a sensible location having direct access to junction9 of the M42 and network rail are committed to provide the infrastructure for connection to the Derby to Birmingham railway line.

Daw Mill however is located on the Leicester to Birmingham railway line the far side of Coleshill inevitably resulting in HGV transport by road through Furnace End and the Green Man Crossroads !

Attached in PDF format is the plan of the new railhead.

The appellant also owns and is marketing an "oven ready" site ideally located for this use only a short distance up the M42 at Ashby de la Zouch. A site known as "The Lounge".

Mr Clarke when assessing available rail served sites failed to mention his clients own site.

This is despite assessing Mantle Lane at Coalville on the same railway line but further distant.

The Lounge has rail access still in place, which was instrumental in obtaining planning consent, and is promoted in the marketing details.

The site extends to 100 acres and adjoins and has direct access onto Junction 13 of the M42/A42.

Cemex say in their letter they wish to relocate staff from both Washwood Heath and Alfreton. The Lounge site is virtually midway on the direct route between the two.

Cemex say in their letter they aspire to supply HS2. This site adjoins the confirmed route of proposed HS2 phase 2 with direct motorway and rail link to the HS2 Kingsbury Road railhead

<https://harworthgroup.com/opportunities/lounge/>

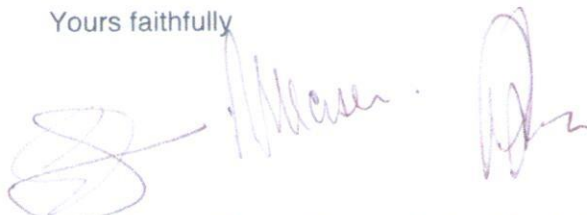
In addition Mr Clarke failed to mention two other rail served sites being marketed by his clients. Both are in the Midlands, one in Nottinghamshire and one in Leicestershire.

<https://harworthgroup.com/opportunities/melton-commercial-park/>

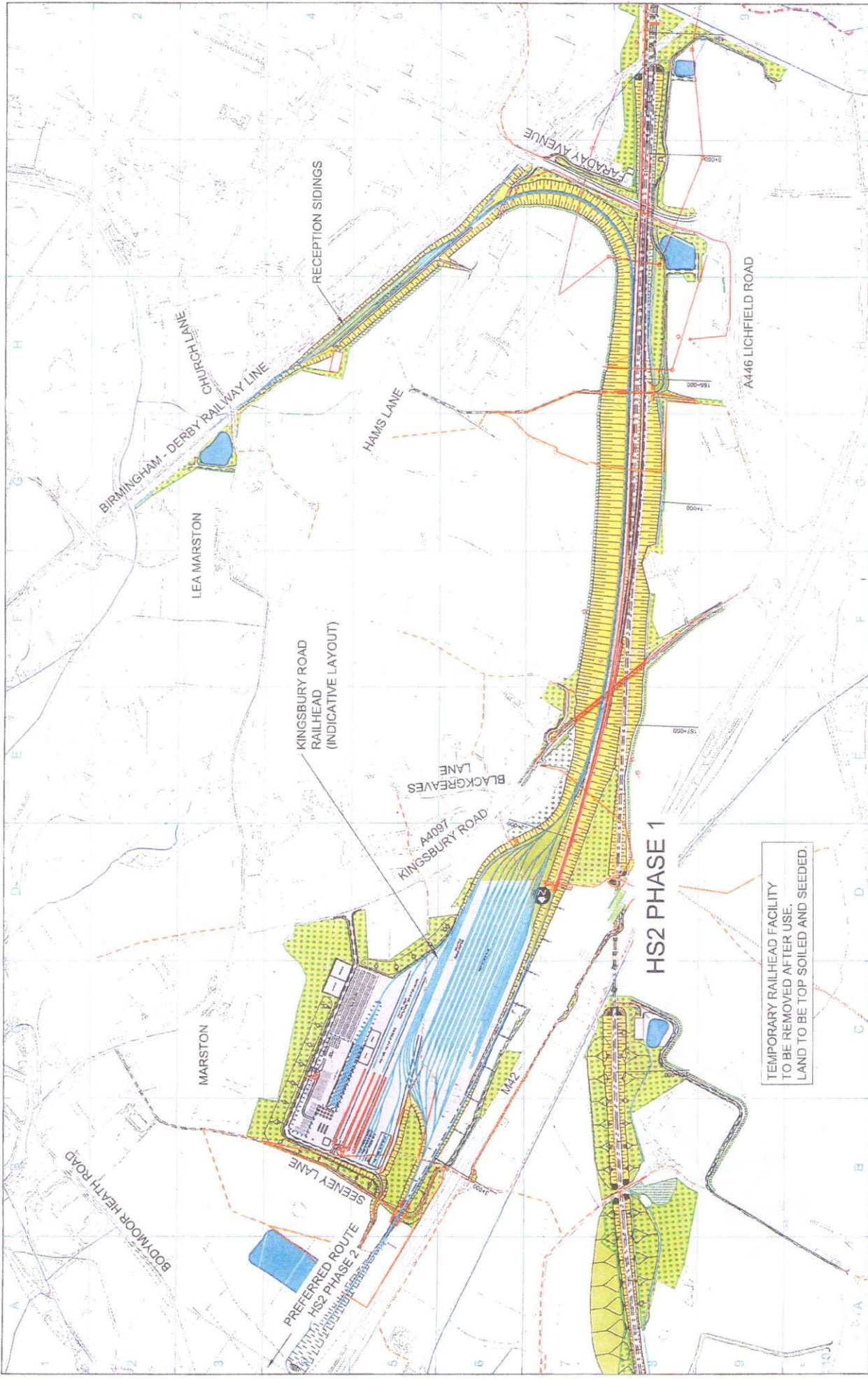
<https://harworthgroup.com/opportunities/bennerley/>

We consider this late submission to be further unreasonable behaviour by the appellant and no weight should be attached to its content.

Yours faithfully

Three handwritten signatures in blue ink are present. The first signature on the left is a stylized, circular scribble. The middle signature is more legible, appearing to read 'M. Mason'. The signature on the right is a simple, horizontal scribble.

Law Rag and Over Whitacre Parish Council



Legend

- Depot, station, headhouse or portal building
- Tunnel portal
- Electricity substation
- Land drainage area
- Ecological mitigation pond
- Balancing pond
- Replacement floodplain storage
- Woodland habitat creation
- Wetland habitat creation
- Grassland habitat creation
- Landscape mitigation planting (scrub / woodland)
- Grassed areas
- Sustainable placement
- Public realm
- Engineering earthworks
- Landscape earthworks
- Rail alignment formation
- Returned to suitable development use
- County boundary
- Borough / District boundary
- Community forum boundary
- Watercourse diversion
- Existing watercourse
- Ditches - new
- Hedge-row habitat creation
- Main utility works
- Existing public right of way (PRoW)
- New, diverted or realigned PRoW
- Stopped-up PRoW
- Tunnels external extent
- Rail alignment
- HS2 Access road
- Noise fence barrier
- Chainage (e.g. 10+000)

Map Number
Map Name
Community Forum Area

Proposed Kingsbury Road Temporary Railhead

Approved by English Heritage under the Act 1984
Approved by the Secretary of State under the Act 1984
Approved by the Secretary of State under the Act 1984
Approved by the Secretary of State under the Act 1984

Doc Number: LWA-HS2-EV-DPL-030-000001 P03.1 Date:

Scale at A3: 1:5,000

0 50 100 150 200 250

Meters

North Arrow

From: Owen Michaelson [mailto:omichaelson@HarworthEstates.co.uk]
Sent: 14 November 2013 09:53
To: Richard Owen
Cc: 'simonreed@coal.gov.uk'; theresa.casey@cfrplc.com
Subject: Daw Mill Colliery

2

Dear Richard

Further to our telephone conversation last week, I am writing to confirm that we are very comfortable if you commence the formal consultation process on the future ownership options on the Daw Mill site. We are also happy for you to instruct Carter Jonas to value the site and if they need to undertake a site visit we can liaise with their nominated valuer to arrange for access and a site induction.

As discussed we have instructed Gleeds to prepare two costs plans for the site.

1. Option 1 shows a cost plan to comply with the existing mineral planning permission. This covers the base line scenario if Warwickshire County Council enforce the existing planning consent which requires a restoration to a green field status.
2. Option 2 shows the phased spend which needs to be invested to complete the shaft filling works and open the site up for alternative business use. We are currently working with North Warwickshire Borough Council on an alternative plan for a local business park on the site. This plan is supported by the Borough Council planning officers.

We have instructed Gleeds to send a copy of the two reports via yourself and addressed to the Crown Estates Commissions so that Carter Jonas can rely on this report.

I can confirm that Harworth Estates is still willing to accept the entire freehold ownership of the site including the freeholds of the two shafts as soon as the work to seal and cap the two shafts and drift have been completed by the Coal Authorities nominated Contractor. Harworth Estates understands and accepts that further works to fully treat the shafts will still be required prior to the redevelopment of the site.

→ JSK

Harworth Estates is fully aware of the site conditions on the site and is "buying with knowledge" and understands the legal obligation to comply with the restoration obligations if the mineral planning consent is enforced by the mineral planning authority.

We have a working assumption that the Coalfield Resources Charge will follow through to the new title however the Harworth Estates charge will be removed prior to the writing of the new title and the Eon Charge will be dropped from the new title. Our working assumption is that we will be in a position to provide you with evidence that Eon are happy for their charge to be removed prior to the writing of the new title. (We are still working through the legal process on this however I am confident that we will have this agreed in good time before the end of the process).

I trust that this email gives you sufficient information on our current position and of our ability to proceed. I am still required to obtain formal board approval to complete the purchase however I am planning to submit a formal application for board approval to our board meeting on the 4th December. In view of the constantly moving position at the site I had not yet submitted a formal request to my board however I can confirm that they are fully aware of the current discussions and have received a monthly briefing since the site was disclaimed by the liquidator in July.

Please let me know if you require any further information at this stage.

Regards

Owen

Owen Michaelson
Chief Executive

[Home](#) > [Search Criteria](#) > [Search Results](#) > [Application Details](#)**Application Details**

Reference Number: NW/95/CM031
Registration date: 06-Dec-1995
Main location: Daw Mill Colliery, Daw Mill Lane, Arley, Warwickshire Cv7 8hs
Summary of proposal: RESTORATION PLAN FOR AUTHORISED SITE
Current position: Granted on 26-Nov-1996

Application type: Minerals
Area: North Warwickshire District
Parish: Arley
Ward:

Full description: RESTORATION PLAN FOR THE COLLIERY 'SURFACE AUTHORISED SITE' AR

Comment: This application has already been decided, and you cannot comment on it.
Consultation ends:

Decision: Granted
Decision date: 26-Nov-1996
Despatch date: 26-Nov-1996

FOR FURTHER INFORMATION, click on the tabs below...

[Applicant & Agent](#) [Publicity dates](#) [Plans & Documents \(0\)](#) [Appeal Details](#) [Consultees](#) [Neighbours](#)**Applicant Details**

Title:
Forename/Initial:
Surname/Company Name: R J B MINING (UK) LTD
Company Contact Name:
Address: Harworth Park, Blyth Road Harworth, Doncaster South Yorkshire Dn1

Agent Details

Title:
Forename/Initial:
Surname/Company Name: A M WRIGHT
Company Contact Name:
Address: Kirkby & Diamond, Meridian House 57 North Twelfth Street, Central Milton Keynes

Case Officer: DP

Swift LG Ltd © 2007



Daw Mill Colliery, Arley -

This application concerns a proposal for a Restoration Plan for the 'surface authorised site' area of the colliery to be approved under Part 20 (Coal Mining Development By the Coal Authority and Licensed Operators), Class A, Condition A.1 (a)(i) of the Town & Country Planning (General Permitted Development) Order 1995.

Proposal -

The pithead restoration proposals for Daw Mill Colliery are necessary under Class A of the 1995 Order because RJB Mining UK (Ltd)., as a licensee of the Coal Authority, propose to continue to work underground coal at the colliery, at which mining commenced before 1st July 1948. In these circumstances, and where there is no approved restoration scheme, the Order requires an application for a restoration scheme to be submitted before 31st December 1995 for approval by the Mineral Planning Authority unless agreed otherwise. It was agreed with Warwickshire County Council that a restoration scheme should be submitted by a revised date of 31st December 1996.

Summary of Detailed Proposal -

- All buildings, structures and hard standing areas to be removed if not needed, prior to placing of soils or soil making materials;
- Mine shafts and boreholes treated and capped in accordance with statutory requirements;
- Low mounding to provide topographical variety and viewpoints into the restored site;
- Retention of existing sandstone outcrops as landscape features;
- Culverted sections of the River Bourne and Ballards Brook to be restored to open channels to ensure watercourse continuity;
- Variable width and depth of channels, with creation of pools and areas of marsh to encourage re-establishment of reed beds and ecological diversity;
- Disused culverts either backfilled or retained for bat hibernation and roosting;
- Public access to site to provide additional opportunities for use of the local countryside, with footpaths, car parks and a picnic area;
- Extensive woodland and shrub planting to encourage ecological diversity (2,500 trees per hectare in main woodland, 5,500 trees per hectare around woodland edge);
- Creation of agricultural grassland to the north of the woodland belt and adjacent to areas of existing pasture;
- Creation of artificial heathland habitats using the sandy nature of soil and the presence of acidic colliery spoil on site.

Consultations -

MAFF (inc. earlier consultation response dated 24.1.96) - No objections. *MAFF* note that the agricultural area has been significantly reduced from that previously proposed; they request that a satisfactory soil structure be compiled to a minimum depth and quality so that the land be reasonably fit for future agricultural use.

North Warwickshire Borough Council - No objections, but request that an agreed code of practice is secured prior to the implementation of the scheme.

Footpaths - No objections, but give a reminder as to the necessity for a dedication agreement relating to the path crossing the site in a south easterly direction.

Countryside Services - No objections, but request that the boundary between pasture and amenity land be marked by a hedgerow. If practicable there should be field boundaries within the pasture land to create an 'intimate' landscape as part of the 'Ancient Arden' area.

The Environment Agency - No objections, but make the following comments:

- (i) Request that there should be no deposition of biodegradable, putrescible or polluting materials to backfill the mineshafts, and advise that the proposed development may require a Waste Management Licence;

(ii) The two boreholes located on the site may be of use to the Agency for monitoring post closure groundwater behaviour, and subsequently they would wish to discuss this prior to them being capped;

(iii) Suggest that the pond at the downstream end of the River Bourne should be on-line to catch any sediment moving down the river after restoration, and that smaller ponds along the river should be created for amphibians;

(iv) A stronger commitment is needed to retain part of the older culvert for bat roosting and hibernation.

County Museum -

No objections on archaeological grounds.

No objections on geological grounds. Suggest that the southern face exposures of sandstone are worthy of consideration for RIGS status.

No objections on ecological grounds. Request that in nature conservation terms a greater area of the site is left to regenerate naturally. Recommend that only fine-leaved grasses are sown so as not to hinder wildflower species becoming established. Suggest weeds are kept under control using bark chippings rather than herbicides. Recommend that the seed mix for recreating the lowland heath area be brought in from a local source.

Arley Parish Council - No objections.

Councillor E. G. Smith - No objections.

Conclusions -

There are no objections to the revised scheme. The comments made by the consultees, whilst useful, do not warrant the applicant resubmitting the scheme again at this stage. With such a long lifetime anticipated for the site (20+ years at this time (November 1996)) it would seem more sensible to approve this scheme subject to a final scheme being submitted 6 months prior to cessation of operations.

Propose - Approve, subject to conditions.

AH. 25.11.96.

NORTH WARWICKSHIRE
 DISTRICT COUNCIL
RECEIVED
16/07/2015
 PLANNING & DEVELOPMENT
 DIVISION



- KEY**
- [Symbol] SITE BOUNDARY
 - [Symbol] PROPOSED CONTOURS AT 1 METRE INTERVALS
 - [Symbol] EXISTING WOODLAND PLANTING
 - [Symbol] PROPOSED WOODLAND PLANTING
 - [Symbol] MELCOWANITY GRASSLAND
 - [Symbol] PROPOSED WATERCOURSES
 - [Symbol] A AGRICULTURAL GRASSLAND
 - [Symbol] STOPPING OFF FENCING
 - [Symbol] POSSIBLE FOOTPATH SYSTEM
 - [Symbol] VIEWING POINTS
 - [Symbol] EXISTED SUCCESSE

RODNEY HILL BRIDGE
 STAKEWELL LAKE
 SITE ENTRANCE
 DAW HILL COLLEGE
 RIVER WARWICK
 PROPOSED WATERCOURSES
 STOPPING OFF FENCING
 POSSIBLE FOOTPATH SYSTEM
 VIEWING POINTS
 EXISTED SUCCESSE

DAW HILL COLLEGE BOUNDARY AND SITE PLAN AND SURROUNDING AREAS
 DATE: 15.07.2015
 DRAWN: J. SMITH
 CHECKED: J. SMITH
 APPROVED: J. SMITH

4

Senior Planner

Planning and Development Group

Economic Growth

Communities

Warwickshire County Council

Tel: [01926 412822](tel:01926412822)

Minicom: [01926 412277](tel:01926412277)

Email: matthewwilliams@warwickshire.gov.uk

Web: www.warwickshire.gov.uk

On 29 December 2015 at 09:34, Chris Warren
<CWarren@harworthestates.co.uk> wrote:

Matthew,

Thank you for your letter dated 22 September 2014 addressed to Tim Love. As discussed on site, we are due to have the whole site surveyed early in January and will also be getting the approved restoration plan digitised. This will allow me to calculate the

minimum cut/fill balance required to comply with the approved contours. Once I have this figure I will provide you with a brief summary making broad assumptions on amount of material to be imported, potential vehicle movements and the duration of time it will take to restore the site.

Following this exercise, we intend to produce the required comprehensive restoration scheme and submit this to the County Council for consideration. Please note that it is our intension that this process will run concurrently to the appeal process and will

hopefully provide the County Council with the reassurance it needs that Harworth Estates are complying the restoration conditions attached to the colliery permission.

I would note that we do not agree with your interpretation that a separate planning permission would be required to import restoration materials on site and this is something that we will address within our comprehensive restoration scheme.

If you have any further questions in relation to the restoration of the site please do not hesitate to contact me on the number below.

Regards

Christopher Warren

Estates Surveyor

Natural Resources



**AMP Technology Centre, Advanced
Manufacturing Park, Waverley, Rotherham,
S60 5WG.**

Tel: [0114 254 1271](tel:01142541271)

5WG.

Tel: [0114 254 1271](tel:01142541271)

Mob: [07881 097482](tel:07881097482)

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Email: cwarren@harworthestates.co.uk

web : www.harworthestates.co.uk

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Please consider the environment before printing
this email

From: Matthew Williams

[<mailto:matthewwilliams@warwickshire.gov.uk>]

Sent: 30 December 2015 09:39

To: Chris Warren

<CWarren@harworthestates.co.uk>

Cc: Tim Love <tlove@HarworthEstates.co.uk>;
Jasbir Kaur <jasbirkaur@warwickshire.gov.uk>
Subject: Re: Harworth Estates - Daw Mill -
Restoration Scheme

Dear Chris

Thank you for your email and confirmation of the intention to produce the Comprehensive Restoration Scheme concurrently with the appeal process.

I also note your view regarding importation of restoration materials/soils. We can discuss this matter further once a clearer picture emerges regarding the balance of materials required.

I look forward to hearing from you early in the New Year.

Regards

Matthew Williams

On 14 January 2016 at 17:18, Chris Warren
<CWarren@harworthestates.co.uk> wrote:

Matthew,

Just wanted to give you a quick update – we have now had the Daw Mill site survey back and had the approved restoration contours digitised. I am therefore now just calculating the cut/fill balance for the site and should be able to provide you with some indicative volumes and vehicle movements next week.

Planning and Development Group

Economic Growth

Communities

Warwickshire County Council

Tel: [01926 412822](tel:01926412822)

Minicom: [01926 412277](tel:01926412277)

Email: matthewwilliams@warwickshire.gov.uk

Web: www.warwickshire.gov.uk

From: Matthew Williams

[<mailto:matthewwilliams@warwickshire.gov.uk>]

Sent: 15 February 2016 13:55

To: Chris Warren

<CWarren@harworthestates.co.uk>

Subject: Re: Harworth Estates - Daw Mill -
Restoration Scheme

Hi Chris

Further to your email of 14 January 2016 I would be grateful if you could update me on progress with developing the restoration scheme - volumes, vehicle numbers, etc.

Regards

Matthew Williams

Senior Planner

Matthew,

Further to your email below I apologise for the delay in responding to you. As you will appreciate reviewing the restoration scheme for the site is being run in parallel with our work on the planning appeal. Gateley and Spawforths have now been jointly appointed to manage the appeal process and have raised a number of questions in relation to the restoration plan.

As a result, they will be jointly responding to your query in due course. I anticipate that they will

have drafted their response by next Friday
(26/02).

Regards

Christopher Warren

Estates Surveyor

Natural Resources

Your ref:

My ref: JK/NW386

Your letter received: 27th April 2015



Mr Ross Jones
LAWRAG
Leavings Millbank
Coleshill Road
Furnace End
Over Whitacre
B46 2LG

Communities

PO Box 43
Shire Hall
Warwick
CV34 4SX

DX 723360 WARWICK 5

Tel: [\(01926\) 412170](tel:01926412170)

Fax: [\(01926\) 412641](tel:01926412641)

@warwickshire.gov.uk

www.warwickshire.gov.uk

13th May 2016

Dear Mr Jones

Former Daw Mill Colliery

*Working for
Warwickshire*

I refer to your letter dated 26th April.

Local planning authorities have a responsibility for taking enforcement action where it is necessary and act in a proportionate way. There are a range of ways to tackling alleged breaches of planning control. Enforcement action by letter and agreement is the quickest and most cost effective way of achieving a satisfactory remedy.

In this instance, Harworth Estates have always indicated that they were willing to restore the site, therefore, at this early stage formal enforcement action was not considered to be appropriate.

As soon as North Warwickshire Borough Council refused the planning permission for the employment uses in November 2015 and we wrote to Harworth Estates to pursue the restoration of the site. We also met representatives of Harworth Estates on site in December 2015.

Regarding your comments about not challenging figures for removing and importing of materials contained in the letter from Gately's. These figures currently lack detail and we will need to see more details before commenting formally. Nevertheless, from my site visit and seeing the restoration there is likely to be extensive materials being moved from the site and importation to achieve the final contours for the restoration of the site

Harworth Estates have now informed us that they have submitted an appeal against the refusal by the Borough Council for employment uses. In addition, Harworth Estates have taken "Legal Opinion" about the legality of the restoration condition and we are taking legal advice on this matter. Once we have this advice we will evaluate our position.

I will advise you further when we have come a conclusion.

Yours sincerely

Jasbir Kaur
Strategic Planning and Development Manager

MR. GEORGE HALL

-to-

WILKINSVILLE COLLIERY LTD

0-17/

LEASE

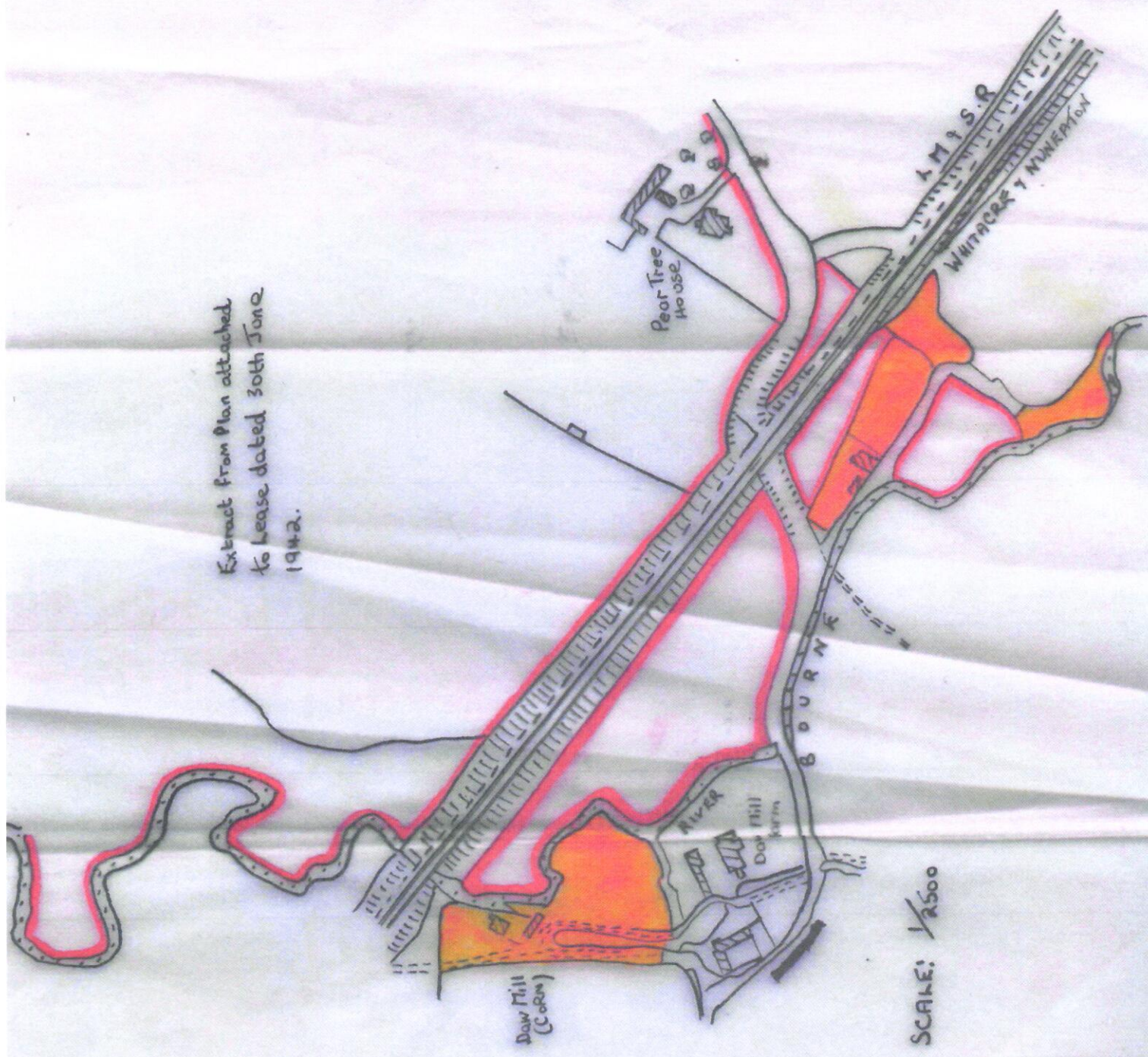
of mines of coal underlying lands situate
in the parishes of Willongley Chastoke and
Wiley in the County of Warwick.

Term: 39 years computed from the 29th
September 1941.

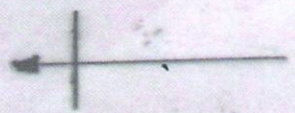
1942
1/10
1/1

Clay & Cochrane,
Solicitors,
Bunceatton.

Extract from Plan attached
to Lease dated 30th June
1942.



SCALE: 1/2500



Stamp 5/-

THIS LEASE made the 30th day of June 1942 BETWEEN GEORGE HAZEL of Arley in the County of Warwick Farmer (hereinafter called "the Lessor" which expression wherever the context so admits shall include the reversioner or reversioners at the time being immediately expectant upon the term hereby created) of the one part and KINGSBURY COBBLERS LTD a Company whose registered office is situated at Kingsbury in the County of Warwick (hereinafter called "the Lessees" which expression wherever the context so admits shall include the persons or body for the time being entitled to the term hereby granted) of the other part.

WITNESSETH in consideration of the rent and royalties hereinafter reserved and ~~the~~ the covenants by the Lessees herein contained AND IT IS HEREBY DECLARED as follows:-

Demise of
seams.

1. The Lessor doth hereby demise unto the Lessees AND SINGULAR the mines described in clause 2 of these presents together with the rights and liberties set forth in clause 3 of these presents TO HOLD the said mines right and liber unto the Lessees for the term of THIRTY NINE YEARS computed from the 29th September 1941 determinable as hereinafter mentioned YIELDING AN PAYMENT therefor the rent and royalties specified in clause 4 of these presents

Term

Mines
demised
(by
reference
to
Schedule)

2. The mines hereby demised are all and singular the mines and seams of coal (but no clay or other minerals) lying in and under:-

- (a) The lands described in the 1st and 2nd parts of the schedule hereto.
- (b) So far only as the Lessor has power to demise the same but not further or otherwise all the mines of coal underlying the line of the L.M.S. Railway which traverses a portion of the lands described in the 2nd part of the said Schedule hereto;
- (c) The lands described in the 3rd pt of the said Schedule hereto as belong to the Lessor;
- (d) So far as the Lessor has power to demise the same but but further or

otherwise lying under one half (to the middle line thereof) of any highway road river and stream or watercourse running along the boundaries of the said lands described in the Schedule hereto.

Exception and reservation of other mines etc

PROVIDED ALWAYS that there is reserved to the Lessor all mines and minerals stone clay and valuable earth whatsoever in and under the said lands other than the mines and minerals hereby demised together with liberty for him and his Lessees and tenants and the miners agents workmen and servants of him and of his Lessees and tenants and others employed by him at all times -----during the term hereby granted to work the mines and minerals so reserved the Lessor and his lessees and tenants and his and their miners agents workmen servants and others respectively doing no more damage in or to the said mines hereby demised than can reasonably be avoided and not wilfully obstructing the Lessees or their miners agents workmen or servants in the occupation enjoyment or working of the said mines and minerals hereby demised or any part thereof and paying or making reasonable satisfaction to the Lessees for all damage that may be done to the mines and minerals hereby demised in working the said excepted mines and minerals such damage in case of difference to be settled by arbitration under the provisions in that behalf hereinafter contained.

Rights and privileges of the Lessees.

3. The following rights and liberties exercisable by the Lessees are included in and form part of the said demise and for the purposes thereof and for all other purposes connected with the due and proper working of the said mines of coal and disposing of the produce thereof that is to say:-

To work demised (1) To search for win work get raise carry away and dispose of for the mines and carry away other mines Lessees' own use and benefit the produce of the mines hereby demised through demised mines and to enter the surface

planes tram and other ways and to erect any machinery or apparatus for ventilating or draining the said demised mines and generally to do and perform all such other acts and things below such surface as the Lessees shall find reasonably necessary or convenient for the proper working of the mines hereby demised.

Rent and royalties reserved by the Lease

4. During the said term the Lessees shall pay to the Lessors the following rent and royalties (which shall be payable half yearly on the 25th March and the 29th September in each year) in respect of the rent and royalties accrued due during the then last half year the first of such payments being made on the 25th March 1942 that is to say:-

(1) Until the 29th September 1942 the yearly rent of £15. 10. -d (payable without any deduction except Landlord's Property Tax mineral rights duty and welfare levy);

(2) From the 29th September 1942 and during the remainder of the said term the yearly certain rent of £37. 5. -d which certain rent shall be paid without any deduction (except Landlord's Property Tax mineral rights duty and welfare levy) and shall entitle the Lessees to work and get in each year from and out of the demised mines such a quantity of coal as at the rate hereinafter mentioned would produce a footage rent equal in amount to the said certain rent for that year but so that the said certain rent shall be paid every half year whether or not such quantity shall in fact be gotten;

(3) In respect of ^{all} coal gotten and raised from or out of the demised mines the footage rent following that is to say the rent of £20 for every acre of 1 foot in thickness (and so in proportion for every less quantity than an acre and for every greater or less thickness than one foot) of coal gotten and raised from or out of the Ryder seam of coal and a rent of £17. 10. -d for every acre of 1 foot in

Together with liberty and power for purposes connected with the working raising carrying away and development of the mines and minerals hereby demised and of all other the mines and minerals of the Lessees to enter upon the surface of the said lands described in the schedule hereto or any part or parts thereof and to sink use and maintain a pit or shaft pits or shafts and to erect construct and maintain such engines machinery appliances gear dressing floors buildings workshops storehouses cottages erections roads tramways spoil banks and other conveniences in or upon the said lands or any part thereof as may be necessary or convenient for the purposes aforesaid or any of them but subject always to the payment of such compensation as is provided by Clause 6 sub-Clause (5) hereof PROVIDED ALWAYS that before taking any land for surface operations the Lessees shall give to the Lessor or his Agent at least one month's notice in writing and shall also give a similar notice to the occupiers of the land proposed to be taken specifying the land proposed to be taken and the purposes for which it is required;

to let down surface

(2) In the course of such workings to let down the surface of the said lands but subject always to the payment of such compensation as is provided by Clause 6 sub-clause (5) hereof;

to make rifts and passages.

(3) So far as consistent with approved mining practice and having due regard to the interest of the Lessor to make rifts and passages through the barriers walls or limits of the mines hereby demised for the purposes of working and getting the coal therefrom and (so far as the Lessor has power to grant this liberty) from any other mines by way of in-stroke or out-stroke through or from any adjoining mines now or hereafter during the term hereby granted belonging or in lease to the Lessees

to drive tunnels airways etc

(4) To drive make and use below the surface of the said lands described in the Schedule hereto such adits drifts tunnels airways watercourses drains inclined

thickness and so in proportion as aforesaid of coal gotten and raised from or out of any other seam or seams of coal included in the demised mines in each half year of the said term.

rules for
calculation
of footage
rent

5. THE LESSEES HEREBY AGREE AND WARRANT that in calculating the amount of the said footage rent the following rules shall be observed:-

- (1) The thickness of the coal shall be measured perpendicular to the surface thereof underground so as to obtain the true cubical contents of the coal gotten;
- (2) In the event of coal being left for support of buildings or safety of working or being bad or unmarketable or unworkable at a profit in consequence of bad quality or to barren ground due to any faults or throw-outs a fair allowance shall from time to time be made for the same such allowances to be shown in the accounts furnished by the Lessees under Clause 6 Sub-Clause (9) hereof the quality of such coal and the amount of such allowances being agreed upon by the Lessor's mining agent or agents for the time being and the Lessees or (in case of difference) to be settled by arbitration in manner hereinafter provided;
- (3) In any of the events mentioned in Sub-clause (2) notice in writing thereof shall be given by the Lessees to the Lessor or his agent or agents and the part of the mine in question shall remain open for the space of 30 days at least after such notice is given so as to enable the Lessor's agent to inspect and test the same;
- (4) If in any half year of the said term the Lessees shall not get out of the demised mines a sufficient quantity of coal to produce for that half year at the rate above mentioned a footage rent equal in amount to the certain rent hereby reserved in respect of such half year and in any subsequent half year or half-year throughout the continuance of the said term shall get a quantity of coal more than sufficient to produce a footage rent equal in amount to such certain rent then and in every such case so much of such excess as shall be required to make up the

preceding deficiency shall be excluded from the computation of footage rent in such subsequent half year or half years it being the intention of the parties that short workings may be made up out of subsequent excess workings during any succeeding half year or half years but in no circumstances shall the lessor in any half year receive less than the full dead or ~~minimum~~ rent.

Covenants by 6. The Lessees for themselves and their assigns and to the intent that the lessees. obligations may continue throughout the term hereby granted or until the sooner determination of this Lease hereby covenant with the Lessor as follows:-

To pay rents and royalties (1) To pay the reserved rent and royalties on the days and in manner aforesaid.

To pay rates and taxes. (2) To bear pay and discharge all existing and future rates taxes and assessments charges and outgoings whatsoever imposed or charged upon the demised premises or any machinery or works therein or thereabouts or the rent and royalties hereby reserved or upon the owner or occupier in respect thereof or payable by either in respect thereof with the exception of tithe redemption annuity surface land tax landlord's property Tax and mineral rights duty and welfare levy;

To work diligently. (3) As soon as practicable and in due course of mining to proceed to win and during the continuance of the said term without unreasonable delay (unless prevented by faults accidents fire water strikes lock-outs or combinations of workmen the state of trade or other circumstances) diligently to work get develop and carry on the demised mines in a skilful and workmanlike manner to the best of the Lessees' ability and in accordance with the most approved practice for the time being adopted in similar mines in the district without unnecessary wast and with as little damage as practicable to the surface of the lands described in the Schedule hereto or to the buildings erections fences and crops thereon;

not to endanger demised mines (4) To work any mine adjoining the demised mines and for the time being worked by improve or working of adjacent mines worked by Lessees the Lessees in such a way as not willingly to endanger the getting of the demised

mines and in case of any improper working within this present sub-clause upon the receipt of written notice given by the Lessor or his agent in that behalf immediately to amend such working in accordance with the covenants herein contained;

To pay compensation for damage to surface etc.,

(5) To make compensation to the owners for the time being of the surface of the said lands described in the schedule hereto and their tenants in respect of any damage to the surface or to any existing or future buildings works or erections or any fences or crops for the time being thereon by reason of the exercise of the powers and liberties hereby given; the amount of such compensation in case of dispute to be settled by the arbitration of two arbitrators or their umpire pursuant to the provisions of the Arbitration Acts 1889 to 1934 or any statutory modification thereof for the time being;

(6) To indemnify and keep indemnified the Lessor against all actions proceeding claims and demands in respect of any such injury or damage as is referred to in sub-clause (5) or any other loss damage or liability in respect of or arising out of the working of the demised mines;

To keep pits etc., in repair.

(7) To keep all pits shafts adits drifts pillars watercourses aircourses buildings workshops erections railways tramways roads engines fitted machinery and other works used in connection with the demised mines in good and substantial repair condition and working order except so far as the same shall cease to be required for the working of the demised mines;

To permit Lessor to enter and inspect and survey

(8) To permit the Lessor or his agent or agents with or without miners surveyors workmen or other persons at all reasonable times to enter upon descend into and ascend from (by means of any shaft or entry wherever situate for the time

being used by the Lessees in connection with the demised mines) inspect and examine the said demised mines and every part thereof and the works connected therewith for the purpose of ascertaining the condition thereof and the manner of working the same and the quantity of coal gotten from the demised mines or for any other reasonable purpose and to take surveys and measurements of the workings in the said mines and for all such purposes to use free of charge all the shafts pits machinery and plant in or upon or used in connection with the demised mines and to have all necessary assistance from the miners workmen and others in the employment of the Lessees;

Plans and
accounts

(9) On the half yearly day next succeeding the date at which the Lessees shall commence to work the demised mines and on each subsequent half yearly day during the said term or within 14 days thereafter at their own expense to make and deliver to the Lessor or his agent or agents a correct account in writing signed by some responsible officer or servant of the Lessees of the said rent and royalties so as to show the amount due in respect thereof up to such half yearly day and also to make and keep correct plans with reasonable measurements drawn upon a scale of not less than 2 chains to 1 inch of the surface lands above the demised mines and the relative position of the underground workings of the demised mines and the roads ways and shafts (whether within or without the area of the said lands) through or over which any coal got from the demised mines shall be raised or carried and if required at their own expense to furnish to the Lessor or his agent or agents a copy of the said plan or plans or to permit the Lessor or his agent or agents at all reasonable times to take copies thereof and to preserve and upon request to supply to the Lessor or his agent or agents copies

of all survey notes on the workings and all such accounts and plans shall be conclusive unless some error therein shall be notified in writing by either party to the other of them within 12 calendar months after delivery thereof and all plans and accounts which the Lessees shall hereafter obtain or use concerning the demised mines shall be open at all reasonable times to the inspection of the Lessor or his agent who may take copies or take extracts from compare and test the same;

To give notice (10) To give to the Lessor or his agent or agents written notice 30 days in advance in each case of the proposed discontinuance abandonment or suspension of any workings in or directly connected with the demised mines except sudden abandonment following upon fire or outbreak of water and before the expiration of such notice to allow him or them the fullest opportunity of inspecting and surveying the workings in question;

not to assign etc. without consent. (11) Not to assign or part with the possession of any part of the demised premises without first obtaining the written consent of the Lessor which consent shall however not be withheld if required for an assignment to trustees for Debenture holders in the Lessee Company or for reconstruction of the Lessee Company or amalgamation of the same with any other Company or unreasonably withheld in the case of a responsible and suitable person firm or company and if any dispute shall arise as to such responsibility or suitability the same shall be settled by arbitration as hereinafter provided;

To observe regulations of acts of Parliament and local bye-laws and to keep Lessor indemnified against penalties etc. (12) To conform to and observe all the provisions of all statutes statutory rules regulations and local bye-laws and restrictions for the time being in force so far as they may affect the demised premises and to keep the Lessor indemnified against all penalties damages proceedings costs and expenses incurred through non-observance or infringement thereof.

To deliver up in good repair.

(13) At the expiration or sooner determination of the term hereby granted to deliver up the demised premises (so far as the same shall not have been worked out under the presents) in good and substantial repair condition and working order in accordance with the covenants herebefore contained.

Covenant by the Lessor.

7. The Lessor hereby covenants with the Lessees as follows namely:-

That the Lessees paying the rents and royalties hereby reserved and observing and performing the several covenants and stipulations herein on their part contained shall peaceably hold and enjoy the mines premises liberties and powers hereby demised and granted during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for him.

General provisions.

8. IT IS HEREBY EXPRESSLY PROVIDED AND AGREED as follows namely:-

(1) If and whenever any of the rents or royalties hereby reserved or any part thereof shall be in arrear for 30 days (whether the same shall have been legally demanded or not) the Lessor may (as an additional remedy and without prejudice to the power of distress and other the rights and remedies to which he would be entitled) enter into and upon any of the mines works and premises hereby demised or for the time being held or occupied by the Lessees under the liberties hereby granted and may seize and distrain and sell as bailiffs may do for rent in arrear all or any of the coal then got and the engines machinery plant horses implements and chattels belonging to the Lessees within under or upon the premises so entered upon and out of the moneys arising from the sale of any such distress may retain and pay all arrears of the said rents and royalties and also the costs and expenses incident to any such distress and sale rendering the surplus (if any) to the Lessees;

Power of re-entry by Lessor.

(2) If any part of the rents and royalties hereby reserved shall be unpaid for 30 days after becoming payable (whether formally demanded or not) or if the

Lessees while the demised premises or any part thereof remain vested in them shall go into liquidation whether voluntary (save for the purpose of amalgamation or reconstruction) or compulsory or in the case of an assign of the Lessees not being a Corporation shall become bankrupt or make any assignment for the benefit of or enter into an arrangement for composition with his creditors or if any covenants or the Lessees' part herein contained shall not be performed or observed then and in any of the said cases it shall be lawful for the Lessor at any time hereafter upon the demised mines and premises or any part of them in the name of the whole to re-enter and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Lessor in respect of any breach of the Lessees' covenants herein contained;

lessor of
certain rent
in certain
vents.

(3) If before the expiration of the said term the whole of the coal hereby demised (except such parts thereof as are unworkable at a profit or as it is by these presents provided are not to be paid for) shall have been gotten or paid for the certain rent hereby reserved shall cease to be payable but the said term shall continue with free way leave and the Lessees shall continue to observe and perform the covenants on their part herein contained so far as still applicable (except the covenant for the payment of the said rent and royalties) PROVIDED however that the Lessees shall thereupon pay to the Lessor a rent in respect of the surface of any lands entered upon used or occupied by them under this demise such rent to be agreed or in default of agreement to be determined by arbitration in manner hereinafter provided and to be payable on the before mentioned half yearly dates;

over for
lessees to
bandon work
ing in
certain
vents on
notice.

(4) If and whenever it shall appear after a full and sufficient trial working and exploration that any part of the demised mines either in consequence of their bad quality or of any fault failure dislocation incursion of water or other inevitable

accident or by reason of the price of labour or transit or other conditions and circumstances of their working and disposal cannot fairly be deemed to be workable by the Lessees at a profit when upon written notice being given by the Lessees to the Lessor or his agent which notice shall set forth expressly the area position and nature of the part in question and the reason or reasons for the proposed abandonment thereof and upon the satisfaction of the Lessor or his agent or agents and in case of dispute between the Lessor and Lessees as to the validity of * as to the validity of the said reason or reasons upon the satisfaction of arbitrators or of an umpire the obligation hereby imposed upon the Lessees of working the demised mines shall as to such part (but no further) and as from the date of the said notice wholly cease and determine and any dispute or question arising under this sub-clause as to whether any part of the demised mines is or is not workable at a profit as hereinbefore mentioned or whether full and sufficient trial working and exploration has been made shall be decided in default of agreement by arbitration as hereinafter provided;

the said reason or reasons

removal of
otten coal
structures
to. at
expiration
: sooner
determination
ion of term
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notice of
desire to
urchase.

(5) at the expiration or sooner determination of the term hereby granted or within 6 calendar months thereafter the Lessees shall have liberty to remove carry away and dispose of all the stock of minerals then gotten out of and all the engines machinery rails sleepers stores implements plant articles and things whatsoever used in connection with the working of the demised mines and being thereon and thereabout and which according to the custom of works of a like character in the district are usually considered removable by a tenant at the determination of his lease unless the Lessor shall be desirous of purchasing the same or any part thereof and of such his desire shall give notice in writing to the Lessees at least 6 calendar months before the expiration of the said term (or in case of sooner

determination shall give such notice within 14 days after such determination) and in such case the said articles and things shall not be removed by the Lessees but shall be taken by the Lessor at the value which the same would have if removed such value in case of difference to be decided by arbitration as hereinafter mentioned to be paid to the Lessees within 3 calendar months after settlement of the amount But the Lessor shall be entitled to set off against such sum any amount due to him from the Lessees in respect of arrears of rent or royalties or breach of any covenant on the part of the Lessees herein contained provided that nothing herein contained shall prevent the Lessees or the person or persons to whom the same shall belong from removing within such period as aforesaid any such articles or things as aforesaid which shall have been hired by the Lessees for the use of the demised mines and which shall not belong to them and also that this sub-clause shall not give the Lessor any right to purchase any such articles or things as are not in about or used exclusively for the purpose of the demised mines or the demised mines in conjunction with other mines also owned by the Lessor.

arbitration. (6) If any dispute or question other than and except any question arising under clause 6 (5) hereof shall arise between the Lessor and the Lessees which it is heretofore expressly declared shall be decided by arbitration the same shall be referred to the arbitration and decision of a third person who shall in each case be appointed in that behalf by the President for the time being of the Institute of Mining Engineers of Great Britain and these presents shall for that purpose be deemed to be a submission to arbitration within the Arbitration Acts 1889 to 1934 or any statutory modification or re-enactment thereof ~~and~~ for the time being in force.

service of
notice.

(7) Every notice requiring service hereunder shall be sufficiently served in the case of the Lessees if forwarded to them by post by prepaid letter to or left at their registered office or at the Chief Office (if other than the registered office) where the business of working the demised mines is being carried on and in the case of an assign not being a company or corporation if delivered personally or forwarded by post by prepaid letter or left at the last known address in England and shall be sufficiently served on the Lessor if delivered to him or his agent personally or forwarded to him by post by prepaid letter or left at his last known address in England and a notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

Marginal Notes. 9. The marginal notes hereto are inserted for purposes of reference only and shall not be read as in any way affecting the construction of these presents.

In WITNESS etc.

THE SCHEDULE before referred to

(First Part)

Not material.

(Second Part)

The lands of the Lessor containing 17 acres & roads 27 perches or thereabouts situate at Arley in the County of Warwick and known as Pear Tree Farm delineated and edged pink on the said plan.

(Third Part)

The lands of the Lessor containing 2 acres and 16 perches or thereabouts situate at Millongley and Arley aforesaid and partly forming the site of a

Former mill known as Daw Mill delineated and coloured yellow on the said plan.

THE COMMON SEAL of Kingsbury Collieries
Limited was hereto affixed in the)
presence of.-)

(S.S.)

J. Douglas Broad)
Arthur W. Jones.) Directors
Arthur Wilkes. Secretary.



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Date: 30th January 2018
Our ref: PAP/2014/0339
Your ref: APP/R3705/W/16/3149827

Dear Sir

**Town and Country Planning Act 1990 – Section 78
Appeal by Harworth Estates
Land at Daw Mill Colliery, Daw Mill Lane, Arley**

I refer to your letter of 25 January in respect of the above appeal and on behalf of the Council thank you for the opportunity to comment on the Statement submitted by the two MP's.

The Statement has been considered and noted. In our view it does not contain materially new evidence to that already heard by the Inspector at the Inquiry. The matters referred to were raised in evidence given to the Inquiry and there was a significant amount of Inquiry time given in cross-examination of that evidence. The Council commented on these issues during the Inquiry and therefore does not consider that it is necessary to its case to return to them.

Yours faithfully

Jeff Brown
Head of Planning Control