



PLANNING COMMITTEE (SPECIAL)

10.00 AM - TUESDAY, 25 NOVEMBER 2014

COUNCIL CHAMBER - PORT TALBOT CIVIC CENTRE

PART 1

1. To receive any declarations of interest from Members.

Report of the Head of Planning

Section A - Matter for Decision

2. Margam Open Cast Coal Site (OCCS) - Current Position - Enforcement Reference Number: E2013/0028 (*Pages 1 - 14*)
3. Any urgent items at the discretion of the Chairman pursuant to Section 100B(4)(b) of the Local Government Act 1972.

S.Phillips
Chief Executive

Civic Centre
Port Talbot

Wednesday, 19 November 2014

Committee Membership:

Chairman: Councillor R.G.Jones

Vice Chairman: Councillor E.E.Jones

Members: Councillors Mrs.A.Chaves, D.W.Davies,
Mrs.R.Davies, Mrs.J.Dudley, S.K.Hunt, D.Keogh,
Mrs.S.Paddison, Mrs.S.M.Penry, R.Thomas and
Mrs.L.G.Williams

**Cabinet UDP/LDP
Member:** Councillor A.J.Taylor

**PLANNING CONTROL COMMITTEE
(SPECIAL)**

25TH NOVEMBER 2014

ENVIRONMENT SERVICES

REPORT OF THE HEAD OF PLANNING – N.PEARCE

INDEX OF REPORT ITEMS

PART 1 – Doc.Code: PLANDEV-251114-REP-EN-NP

SECTION A – MATTERS FOR DECISION

WARD(S) AFFECTED: Margam Ward and Wards within the Bridgend area

**CURRENT POSITION PAPER REGARDING MARGAM
OPEN CAST COAL SITE (OCCS)
ENFORCEMENT REFERENCE NUMBER: E2013/0028**

Purpose

As Members will be aware, Margam Open Cast Coal site ceased coaling in 2008 and since that time there has been no restoration of the site. Concerns have therefore been raised by Elected Members and the local communities with regard to the lack of progress in relation to enforcing restoration. The purpose of this report is therefore threefold; firstly to advise Members of the history associated with this site; secondly to provide a clear update of the constraints associated with enforcement of the planning legislation in relation to this site; and lastly, to outline the potential options going forward. It is not within the remit of the LPA to assess or consider the issues associated with the transfer of land ownership from Celtic to Oak.

Background

Within two months of cessation of coaling in October 2008, the operators

were required to commence backfilling of the void (under condition 60 of planning permission P2006/1727). They were also required to submit a restoration and aftercare scheme in accordance with conditions 54 and 55 of planning permission P2006/1727, which would then be implemented to secure full restoration of the site. However these works did not commence, nor were the above required schemes submitted by the operators or landowners, despite requests to do so from the Local Authority.

Prior to the cessation of work, the operators pursued an application for the extension of the extraction area to allow further coaling to take place (NPT App Ref: P2007/ 0663). This application was refused planning permission by this authority on the 29th January 2008. An identical application was also submitted direct to Bridgend County Borough Council which was also refused planning permission on the 17th January 2008. The reasons for refusal by this authority were as follows:

- (1) The development would create a visual intrusion into the landscape which would result in significant harm to the rural character of the area, prejudice the open character of the green wedge and cause demonstrable harm to the visual amenity of neighbouring residents, contrary to Policy ENV2(v) of the Deposit Draft Unitary Development Plan for Neath Port Talbot, Policies C1 and M6(iv) of the West Glamorgan Structure Plan (Review No.2) as amended and Policy DC3 of the Draft Minerals Local Plan for West Glamorgan.
- (2) The development will perpetuate opencast activities within the locality and on the existing site for a further minimum period of five and a half years resulting in an unreasonable level of disruption in terms of visual impact, noise and dust, thereby causing unacceptable detrimental cumulative impact on local residents and the surrounding area contrary to Policy M3 of the West Glamorgan Structure Plan (Review No. 2), Policy GC2 of the Deposit Draft Neath Port Talbot Unitary Development Plan and Policy DC25 of the Draft Minerals Local Plan for West Glamorgan.

The operator appealed against this decision, which was recovered by the Welsh Assembly. The appeal was dismissed in April 2009 but was subsequently challenged by Celtic. The challenge was also dismissed by the High Court in July 2010 and again by the Court of Appeal in October 2011. In accordance with best practice guidance, neither authority pursued enforcement of the conditions, whilst the appeals process was ongoing.

During the appeals process, the operator transferred ownership of the site together with another three sites within South Wales, to an off shore company registered within the British Virgin Islands. This company is known as 'Oak Regeneration'. Following this transaction, the operator refused to discuss any matters associated with the site with officers of this authority. At the same time, it was unclear who was representing the new owners of the site given that they were registered offshore. After some time, a legal firm confirmed that they were representing Oak Regeneration and a subsidiary company 'Beech' who were responsible for the Margam OCCS. They appointed planning consultants, SLR, to act on their behalf and a number of meetings have taken place with representatives from SLR, Celtic and Oak since late 2011.

As part of that process, officers from Neath Port Talbot and Bridgend County Borough Councils have attended a number of meetings with Celtic, Oak and SLR to discuss the need to secure restoration of the site. During these meetings both local authorities have expressed deep concerns with regard to the lack of restoration to date, and the fact that an extension of the extraction area has previously been refused consent and dismissed at appeal, and it was not possible to see how these reasons could be addressed within a new submission. Officers from both authorities have consistently and repeatedly stated that they would like to see full restoration of the site in accordance with the original planning permission.

As part of those discussions a scheme was proposed by SLR to restore the site back to original or similar ground levels and implement a regeneration scheme involving the creation of a 'Garden City'.

Both LPAs expressed concern with regard to such a proposal, given that it is located in a non sustainable location, is outside settlement limits, will result in the construction of significant numbers of dwellings which go beyond the identified housing projections of both authorities and did not comply with the vision and objectives of the adopted and emerging Development Plans within both LPA areas. In response to such concerns the Planning Consultants acting on behalf of both Celtic and Oak advised both LPAs that a strategic solution was required for this site which went beyond the objectives of the current Development Plan(s). Nevertheless concerns were maintained by both LPAs that the creation of a Garden City would not be supported by officers in either Council.

After some time all parties reconvened to discuss whether there was an

alternative to the 'Garden City' proposal. At these meetings it was confirmed by Celtic, Oak and their consultants that for financial reasons, restoration of the site could only be delivered if further coaling and regeneration of the site was permitted.

Whilst these discussions were taking place, external legal advice was sought by both LPAs. The advice to this authority required us in the short term to undertake the following two actions:

- Serve a Planning Contravention Notice (PCN) to establish ownership and interests in the site.
- Complete a restoration scheme to append to a potential future enforcement notice. Such a scheme is required in the absence of a submission by the operator in accordance with the requirements of conditions 54 and 55 of planning permission P2006/1727 as stated above. This scheme would identify the extent of the work required to complete restoration of the site and the timescales within which such work must be completed.

In response to the above advice, PCNs were served on the 6th February 2013. The PCN was served to seek information as it relates to land ownership, other interests, the current or last use of the site and if a restoration scheme had been prepared. All responses to the PCN were received within the prescribed deadline and confirm that Oak Regeneration are the owners of the site and Celtic are the Coal Authority license holders.

After serving the PCNs, a restoration scheme was jointly commissioned by both LPAs from an independent consultant. The restoration scheme identifies how the site could be restored in accordance with the originally approved restoration strategy, together with a restoration sequence plan which outlines timescales for the completion of the work.

As part of the discussion process referred to above, the completed restoration scheme was given to both Oak and Celtic to consider. It was confirmed by Celtic that there were insufficient funds available to restore the site in accordance with the originally approved restoration strategy and recently prepared restoration scheme. This was also confirmed by Oak, who also stated that should an Enforcement Notice be served to secure compliance with such a restoration scheme, due to insufficient funds being available it would force the company into liquidation, which would culminate in no restoration of the site.

Concerns were expressed by both LPAs with regard to the underlying threat within such a statement. However due to insufficient funds being available to either company they both stood by their individual statements. They also both requested regular meetings with both LPAs to discuss alternative restoration proposals. At the time they also confirmed that the only feasible way to secure restoration of the site, involved the winning and working of further coal reserves. As a consequence of this, the planning consultants working on behalf of both companies, prepared a number of restoration proposals in relation to the site.

As part of this process a total of 18 potential schemes were presented to the LPAs together with a justification as to why each one could or could not be delivered. The schemes ranged in scale from those which involved additional coaling followed by restoration, to those that involved a lesser degree of coaling but with renewable energy as an after use, and those which involved pure residential regeneration of the site with no coaling. Most of the potential schemes were dismissed as being undeliverable by Celtic and Oak for financial reasons, while those which they proposed to pursue were dismissed by the LPAs as they did not address the original reasons for refusal as cited for the above mentioned planning application.

As a consequence of the above, and given the financial constraints in place, the companies were asked by both LPAs without prejudice, to look at potential hybrid schemes which involved a restricted amount of coaling together with a tourism led regeneration scheme. In response they submitted two alternative proposals, one of which included the extraction of 800,000 tonnes of coal together with the creation of a camp site and construction of holiday lodges which will be sited around a lake to be positioned above the extraction area associated with the additional coaling area. The restoration of the existing void would also be secured and would include the creation of small ephemeral ponds and geothermal ponds, food production areas including agri-science projects utilising geothermal heat sources. It was also proposed to retain the existing overburden mound with some peripheral re-grading, the plateau of which would be utilised to accommodate a solar farm. In addition to the aforementioned it was proposed to reintroduce water courses and highways through the site. This proposal was referred to as Option K.

The second option, Option L3, also proposed to extract 800,000 tonnes of coal which would be restored to a lake, that would be surrounded by a hotel and leisure facilities together with holiday lodges and executive housing. The existing void would be restored and would be occupied by

ephemeral ponds and approx 55 hectares of low carbon housing in addition to allotments, and a public park. Again it was proposed to retain the existing overburden mound with some peripheral re-grading, the plateau of which would be utilised to accommodate a solar farm. The water courses and highways would also be reinstated through the site.

Both of the above schemes were discussed and Option K was dismissed by the Planning Consultant as being undeliverable for financial reasons. Following the meeting further details were requested from the Consultants as it was unclear how such a conclusion could be reached given that the Option did not involve the restoration of the overburden mound, while the existing void would be filled from the material extracted from the additional extraction area, which would itself be progressively restored during the coal extraction process. When the financial assessments which were alleged to have been carried out were requested from SLR by officers, the advice received was that they did not exist. The developers have subsequently been asked to clarify why they concluded that such an option was undeliverable in the absence of such an appraisal. Despite requests from this authority, that clarification has not been forthcoming.

Notwithstanding the above, it is clear that the restoration fund which currently stands at £5.7million is wholly insufficient to secure any form of restoration of the site. In fact the sum is probably insufficient to pay for the pumping of the void which is currently filling up with water and stands at present at approximately 41 metres AOD.

Throughout the many meetings held with Celtic, Oak and SLR, officers have repeatedly outlined our concerns regarding site security and safety, rising water levels, lack of pumping of the void and lack of restoration. In response to these concerns, the applicants have again indicated that the restoration of the site in accordance with the originally approved restoration strategy and recently prepared restoration scheme cannot be delivered for financial reasons. Effectively any restoration of the site would have to pay for itself although the limited money secured within the restoration fund would contribute towards such costs.

While restoration discussions have been ongoing with Celtic, Oak and SLR, further discussions have been held with other interested parties including Bridgend County Borough Council officers, together with representatives from Natural Resources Wales, the Coal Authority, Network Rail, and Her Majesty's Inspectorate of Mines and Quarries. Whilst these discussions are ongoing, the following is a synopsis of the

powers available to each organisation:

Bridgend County Borough Council: Whilst a planning permission is in place in relation to the former mining activities at this site, externally secured legal advice has questioned the enforceability of the conditions which secure restoration and aftercare of the site. As a consequence there is heavy reliance upon the ability of this authority alone to enforce against the interested parties under the planning permission which was granted within Neath Port Talbot.

Natural Resources Wales (NRW): NRW is not in a position to intervene in relation to the increasing water level within the void, the responsibility remains with the operator/landowner. Celtic Energy retain four water discharge activity permits at the site, two of which may be used to discharge void water. Should an uncontrolled and unauthorised release of water from the void enter controlled waters, it is highly likely that it will result in a formal investigation which may lead to enforcement action being instigated by NRW.

The Coal Authority (CA): Again discussions have taken place with the CA where they have confirmed that they are an interested party in this site given that they issued the license to the operators. They, as an organisation, also hold the ownership rights associated with the coal seams, albeit these have been transferred to the former operators via a lease, but they retain overall freehold responsibility for the coal seams outwith of the void. They have indicated that their hands are tied in terms of taking action in relation to non-compliance with the planning conditions and associated legal agreements relating to restoration, given that the lease associated with the site has not yet expired and the only sanction that they potentially could have would involve termination of the lease. This wouldn't be of assistance as the CA is not responsible for restoration of the void.

Her Majesty's Inspectorate of Mines and Quarries: Have confirmed that they only have responsibility for the operations undertaken on site when the site is operational and have no responsibility associated with the risk to the public following the cessation of an activity.

Network Rail: The Ogmore Valley Extension Line runs immediately adjacent to the application site. Although it is not a main line railway and as such is not used on a frequent basis, when works are taking place or there is an incident on the main railway line, it is used as an alternative route by both passenger and freight operators. If the line becomes

unusable for any reason, Network Rail has concerns for the safe operation of the railway and passenger safety and can also be fined for the period that the line is unavailable.

Network Rail has expressed serious concerns in relation to the potential for flooding associated with the increasing water levels within the void created as part of the Margam Opencast Coal Site.

Notwithstanding these discussions, it remains to be the case that the former open cast coal site has not been restored and the void continues to fill with water. Studies undertaken by the former operator suggested that when the water level within the void goes above 40m AOD, it should theoretically connect with old workings and the Brynddu Shaft which is located to the west of the void area beyond the Hafodheulog woods. They theorised that if the water emanates from the Brynddu Shaft the water would eventually flow into the nearest watercourses which will include the Afon Kenfig, the water levels would also stabilise and should not rise substantially above 40m AOD. This should then prevent any adverse impact upon the surrounding communities and environment.

A recent site visit confirms that water is now discharging via the Brynddu Shaft however water within the void continues to rise. At the date of writing this report, Celtic confirmed that the water levels were at a height of 41.3m AOD. If the water levels continue to rise this could result in the failure of the high wall into the void together with a potential outflow or rush of water which will overspill into the surrounding area.

This potential scenario has been discussed at length with the landowner, former operator and other regulators. Celtic have indicated that they are now monitoring the water on a weekly basis and the levels are currently standing at 41m AOD. They have prepared a platform to accommodate pumps should the need arise to pump water from the void. The pumps would stabilise the water levels to prevent them rising beyond a level that could inflict environmental damage. They have however indicated that it is not their intention to continue this over the long term given the costs associated with the operation of the pumps and the fact that they consider that the recent court case confirmed that the transfer of land ownership between Celtic and Oak was successful and therefore Oak are the landowners. What remains unclear is whether the transfer of ownership also resulted in the transfer of liability. Whilst both Oak and Celtic are of the opinion that this is the case, this issue has not been tested in the courts and as such remains unknown. As a result, the responsibility for site safety and security including the water levels within the site remains

unknown at this time despite the assertion from Celtic that they do not consider themselves responsible for this liability. Nevertheless they have confirmed that should the use of pumps be required and they subsequently decide to turn them off, they will give no less than 3 months notice to the LPAs.

Both Celtic and Oak have been requested to confirm the position going forward in terms of the responsibility relating to safety, primarily in the short term associated with the water levels within the void, but despite a number of prompts for a reply, they have yet to do so.

Where do we go from here?

In terms of the intervention of Regulators, for the reasons specified above, none of the Regulators are able to take any preventative action. Intervention on the part of some Regulators can only take place following a breach of the void area.

A significant amount of pressure from local residents and Elected representatives has been received by both LPAs requiring immediate action to enforce restoration. It is clear from the correspondence received that there is a perception from the public that the LPAs need only to serve an enforcement notice, which will in turn force the responsible party whether it is Celtic or Oak Regeneration to complete the restoration of the site. Unfortunately for the reasons inferred above this is not the case.

Given the concerns regarding the enforceability of the conditions associated with the planning permission granted by Bridgend County Borough Council, the responsibility for serving an enforcement notice would rest with Neath Port Talbot. The enforcement notice would require compliance with a restoration scheme which would be included within the Notice. As stated above that restoration scheme has been completed. The Enforcement Notice would specify the steps required at the site i.e. complete restoration of the site in accordance with the restoration scheme appended to the notice and it would also specify the time frame in which to do so. As stated above, both Celtic and Oak Regeneration have indicated that should such a notice be served then they have no intention of complying with the notice as they do not have the funds available to complete such restoration. Oak has also stated that they would fold the company or companies if the LPA serves an enforcement notice requiring such restoration.

As a result, the serving of an enforcement notice would not secure the outcomes required by the LPAs, or members of the public. In

straightforward enforcement cases, the LPA has the opportunity to take direct action utilising any funds available within an escrow account. Unfortunately the fund only contains £5.7 million which is unlikely to cover the cost of dewatering the void let alone restoration of the site.

The question has been asked as to why the restoration fund is inadequate to cover restoration of the site. The ownership of this site together with a large number of other sites in the Country were transferred from British Coal to private companies following the privatisation of the Coal Industry in 1994. The planning permissions that were held by British Coal in relation to Margam (Parc Slip West) site did not require any financial guarantee or bond. Given that the planning permission related to the land rather than the operator, this planning permission, without any financial guarantees for restoration, transferred to Celtic. As a result, financial guarantees were only sought in relation to subsequent applications, the first of which was for Margam Mine (App Ref: 1998/0541) which was granted in 1999 and was subject to a legal agreement which included a restoration fund, which as previously stated amounts to a total sum of £5.7 million. The Bond as it stood was subsequently transferred to the 2006 consent.

The consequence of this is that there are insufficient funds available to both LPA's to enable them to secure restoration in default of the operator. Unfortunately this is not a unique situation and also applies to the East Pit site which is currently operating within the Cwmllynfell / Tairgwaith / Gwaun Cae Gurwen areas, and may be the case for other sites beyond our County Borough.

As a result, it is clearly evident that the serving of an enforcement notice is unlikely to secure restoration of the site nor do either of the Councils have the financial means behind them to secure the restoration of the site in default.

Options going Forward

Whilst the local communities are quite clearly concerned about the lack of restoration taking place at the site and the perceived inactivity of the LPAs, the options going forward are unfortunately limited but are as follows:

Option 1 - Serve an Enforcement Notice to seek full restoration of the site

We have spent a considerable amount of time and effort discussing the

need for a restoration scheme with Celtic and Oak Restoration to no avail. If we continue to pressurise them, culminating in the service of a formal Notice, this is likely to result in the Oak (the owner of the site) going into voluntary liquidation. Upon liquidation, the liquidator can disclaim property by submitting a prescribed form of Notice to the Land Registry. In that case, the freehold transfers to the Crown, however the Crown itself can decide to disclaim property at any time.

Given the liabilities that will come with ownership it is likely that this will be the case. As a result the land will have no owner and therefore no-one will be responsible for its security and safety in the short term and its restoration in the long term. Should the water levels continue to rise in the void beyond 41m AOD, there is potential for a flow or rush of water and consequential flooding to the surrounding areas. The cost of any remedial action associated with such an event would have to be picked up by the public purse within which there are insufficient funds.

For the reasons specified above it is not considered to be appropriate to pursue Option 1

Option 2 - Alternative Restoration Scheme including Extraction of further coal.

Continue discussions with Celtic and Oak Regeneration in relation to an alternative restoration scheme which is likely to retain the over burden mound and a lake albeit to a shallower depth. This may potentially require additional coaling over an approximate three year period but will be to a lesser extent than that previously considered and refused. The additional coaling will result in progressive restoration of the void to ensure that one void isn't replaced with another and to ensure that the existing void area is either wholly or partially refilled. A leisure led regeneration scheme similar to that outlined within Option K as referred to earlier in the report may also be appropriate at this location. However a residential scheme of this magnitude is considered to be unacceptable.

It should be acknowledged that since the previous refusals were determined, the coal industry has experienced an economic meltdown. This has already had a massive impact in Scotland following the collapse of Scottish Coal which left behind a large number of un-restored sites together with insufficient restorations funds to address the matter. It is not unreasonable to state that the economic position is getting worse rather than better with a further declining price in coal. This further decline is making the coal industry less viable, as the price of coal may

not be sufficient to cover the cost of extraction. If the price of coal continues to fall, it may well be the case that an extension of the extraction area will also not release the profits required to pay for the required restoration.

It should be noted that further planning permission will be required for the additional extraction and the amended restoration. Given the proximity of the site to the Kenfig Special Area of Conservation (SAC) an Appropriate Assessment (AA) may also be required.

Option 3 - Alternative Restoration Scheme without further coaling

As stated above, the cost of full restoration exceeds the funds available, and as such the only potential form of restoration that may be acceptable, and which does not involve further extraction, with the cooperation of Celtic and Oak Regeneration, is to partially backfill the void area with material held within the surcharge mound to create a slightly shallower lake. Where possible, the former highways and rights of way which ran through the site prior to the creation of the open cast coal site should be reinstated. This option is less likely to secure a site which bears any resemblance to the site prior to its operation as an Open Cast Coal Site.

It should be noted that further planning permission will be required for the amended restoration. Given the proximity of the site to the Kenfig Special Area of Conservation (SAC) an Appropriate Assessment (AA) may also be required.

Option 4 - Serve an Enforcement Notice to seek phased restoration of the site

Option 1 identifies the potential implications associated with full restoration. This report has also outlined the potential consequences associated with the rising water levels which are of immediate concern. Should Members wish to progress either Options 2 or 3, then it may also be appropriate to serve an enforcement notice requiring the phased implementation of the restoration scheme which has been prepared for the Council. Phase 1 of the enforcement notice would be to commence dewatering of the void. Phase 2 would be to commence the restoration of the site, within an agreed period of time. If during the dewatering phase, progress is made in relation to options 2 and 3 and work commences to implement an approved scheme, the Council can then withdraw the enforcement notice.

It should however be noted that the costs associated with pumping may well be prohibitive to Celtic and Oak. The potential for the owner to place their company into voluntary liquidation must therefore be considered. The consequences would then be the same as outlined in Option 1.

Option 5 - Do Nothing

The implications for this scenario are the same as those outlined within Option 1. When both Celtic and Oak Regeneration have been asked to clarify their responsibilities for this site, Oak Regeneration have been silent on the matter. Celtic have indicated that they are of the opinion that the transaction was successful and that Oak are the owners of the site and will be responsible for the longer term site security and safety. They have also indicated that should it be necessary they will commence pumping of the void. Oak Regeneration have not confirmed their intentions with regard to the site and have only attended meetings held with the LPAs when it involves the discussion on alternative restoration schemes put forward by their consultants. The one exception to this related to their attendance at the PCN meeting where they asked the authority to be more cooperative in relation to further discussions in terms of finding a solution, and they implied that the LPAs were being obstructive.

If indeed it is confirmed that the transaction was successful and Oak Regeneration are responsible for all aspects of the site, they have already confirmed that they do not have funds available to address any liabilities. As a result the 'Do Nothing Scenario' is likely to result in the void continuing to fill and the potential for a breach of the void into the surrounding area. Oak will fold and the public will be left to cover the costs associated with such a breach. Such costs are likely to be beyond the means of both LPAs and will also result in the site remaining un-restored.

Recommendation:

That members consider the above report and give authorisation for the Council to arrange a cross boundary public meeting to advise all interested parties of the current position with regard to this site in addition to authorising officers to pursue Options 2 and 3.

Reason:

To secure a form of restoration and aftercare of the site in accordance with the objectives of conditions 54, 55 and 60 of planning permission P2006/1727, in the interests of the character and appearance of the surrounding countryside and to improve and safeguard the amenities of residents within the adjacent communities, as required by Planning Policy Wales Minerals Technical Advice Note 2 – Coal (January 2009) and Policy M8 of the Neath Port Talbot Unitary Development Plan