



Meeting: **Development Control and Regulatory Board**

Date/Time: **Thursday, 13 October 2022 at 2.00 pm**

Location: **Sparkenhoe Committee Room, County Hall, Glenfield**

Contact: **Mr E. Walters (Tel: 0116 3052583)**

Email: **euan.walters@leics.gov.uk**

Membership

Mr. J. G. Coxon CC (Chairman)

Mr. R. G. Allen CC Mr. D. Harrison CC
Mr. N. D. Bannister CC Mr. B. Lovegrove CC
Mr. M. H. Charlesworth CC Mr. K. Merrie MBE CC
Mr. D. A. Gamble CC Mr. L. Phillimore CC
Mr. D. J. Grimley CC Mr. C. A. Smith CC

Please note: this meeting will be filmed for live or subsequent broadcast via the Council's web site at www.leicestershire.gov.uk – Notices will be on display at the meeting explaining the arrangements.

AGENDA

Item

1. Minutes of the meeting held on 11 August 2022. (Pages 3 - 6)
2. Question Time.
3. Questions asked by Members under Standing Order 7(3) and 7(5).
4. To advise of any other items which the Chairman has decided to take as urgent elsewhere on the agenda.
5. Declarations of interest in respect of items on the agenda.
6. Presentation of petitions under Standing Order 35.



Reports of the Chief Executive on Planning Applications - County Matter Applications.

7. 2022/0940/07 (2022/VOCM/0070/LCC): Wavin Ltd - Variation of Conditions 4 (clay stocking), Condition 15 (Importation of Material), Condition 30 and 31 (provision of detailed restoration scheme) of Planning Permission 2020/VOCM/0156/LCC - Donington Island Clay Stocking Facility, Donington Island, Spring Cottage Road. (Pages 7 - 32)

Reports of Director of Corporate Resources.

8. Leicestershire County Council Country Parks Byelaws. (Pages 33 - 46)

Reports of the Director of Law and Governance.

9. Revised Members' Planning Code of Good Practice. (Pages 47 - 66)
10. Any other items which the Chairman has decided to take as urgent.
11. Dates of future meetings.

Future meetings of the Board are proposed to take place on the following dates all at 2.00pm:

Thursday 17 November 2022;
Thursday 8 December 2022;
Thursday 12 January 2023;
Thursday 16 February 2023;
Thursday 6 April 2023;
Thursday 11 May 2023;
Thursday 22 June 2023;
Thursday 3 August 2023;
Tuesday 19 September 2023;
Thursday 26 October 2023;
Tuesday 5 December 2023.

12. Chairman's Announcements.



Minutes of a meeting of the Development Control and Regulatory Board held at County Hall, Glenfield on Thursday, 11 August 2022.

PRESENT

Mr. J. G. Coxon CC (in the Chair)

Mr. R. G. Allen CC
Mr. N. D. Bannister CC
Mr. M. H. Charlesworth CC
Mrs. H. J. Fryer CC
Mr. D. J. Grimley CC

Mr. D. Harrison CC
Mr. B. Lovegrove CC
Mr. K. Merrie MBE CC
Mr. C. A. Smith CC

21. Minutes of the previous meeting.

The minutes of the meeting held on 14 July 2022 were taken as read, confirmed and signed.

22. Question Time.

The Chief Executive reported that no questions had been received under Standing Order 34.

23. Questions asked by Members.

The Chief Executive reported that no questions had been received under Standing Order 7(3) and 7(5).

24. Urgent items.

There were no urgent items for consideration.

25. Declarations of interest.

The Chairman invited members who wished to do so to declare any interest in respect of items on the agenda for the meeting.

It was noted that all members who were members of a Parish, Town or District Council, or Liaison Committee would have personal interests in applications which related to areas covered by those authorities.

No formal declarations were made however it was noted that Mr. N. Bannister CC had a close relative that worked as a teaching assistant at a primary school in Burbage.

26. Presentation of petitions.

The Chief Executive reported that no petitions had been received under Standing Order 35.

27. 2022/0009/04 (2022/Reg3Ma/0012/LCC): Leicestershire County Council - Construction of primary school with associated landscape and external works - Normandy Fields Development, land west of Normandy Way, Hinckley.

The Board considered a report of the Chief Executive, a copy of which marked 'Agenda Item 7', is filed with these minutes.

The Chief Executive pointed out a typographical error in paragraph 3 of the report which should have referred to 'residential development to the *west* and a combination of residential and commercial development to the *east*'.

The Director of Law and Governance reminded members that although the applicant was Leicestershire County Council they should consider the application in the same manner that they would those from all other applicants.

In accordance with the procedures for making representations to the Board, Mr. D. C. Bill CC spoke as the local member. Mr Bill CC said that he welcomed the proposed new school which was required due to the amount of new homes which were being built nearby, however he had concerns about parking at the school and congestion caused by parents in vehicles dropping off and picking up their children from the school. Mr Bill CC asked for a Note to Applicant to be sent asking whether additional parking spaces could be provided.

Members shared Mr Bill's concerns about parking and vehicle congestion.

The Chief Executive reminded members that they were required to assess whether the application in front of them was acceptable; the Board could not propose amendments to the application.

In response to a question from a member the Chief Executive confirmed that it was not part of the planning application that pupils would be taken to the school by bus. As it was intended that the school would be for children living nearby it was expected they would travel to school on foot or by bike.

RESOLVED:

That the application be permitted subject to the conditions nos. 1-12 as set out in the appendix to the report.

28. Delegated Tree Preservation Order Decisions January 2022 to June 2022.

The Board considered a report of the Director of Environment and Transport which set out the Delegated Tree Preservation Order Decisions January 2022 to June 2022. A copy of the report, marked 'Agenda Item 8', is filed with these minutes.

With regards to the report Mr. M. H. Charlesworth CC asked for an explanation of what epicormic meant and it was agreed that an explanation would be provided after the meeting.

RESOLVED:

That the contents of the report be noted.

29. Chairman's announcements.

The Chairman announced that the next meeting of the Board would take place on 8 September 2022 at 2.00pm.

2.00 - 2.47 pm
11 August 2022

CHAIRMAN

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DEVELOPMENT CONTROL AND REGULATORY BOARD

13th October 2022

REPORT OF THE CHIEF EXECUTIVE

COUNTY MATTER

PART A – SUMMARY REPORT

- APP.NO. & DATE:** 2022/VOCM/0070/LCC (2022/0940/07) – 30th May 2022.
- PROPOSAL:** Variation of Conditions 4 (clay stocking), Condition 15 (importation of material), Condition 30 and 31 (provision of detailed restoration scheme) of Planning Permission 2020/VOCM/0156/LCC.
- LOCATION:** Donington Island Clay stocking Site, Spring Cottage Road, Ashby Woulds, DE12 6NA (North West Leicestershire District).
- APPLICANT:** Wavin Ltd.
- MAIN ISSUES:** Safeguarding fireclay resources and restoration.
- RECOMMENDATION:** PERMIT subject to the completion of a legal agreement and subject to conditions as set out in appendix B to the main report.

Circulation Under Local Issues Alert Procedure

Mr R Ashman CC

Officer to Contact

Katie Ferguson (Tel. 0116 305 7325)
Email: planningcontrol@leics.gov.uk

PART B – MAIN REPORT

The Site and Surroundings

1. The Donington Island clay stocking site is located within the Ashby Wolds, to the south of Albert Village. The site is bounded to the north by Albert Village Lake and to the east by Reservoir Hill and Spring Cottage Road, beyond which is the Conkers tourist attraction. To the south and south-west there is existing vegetation, residential properties and a railway beyond the vegetation. To the west is the Swainspark Industrial Estate. Public Rights of Way P39 runs along the south-west boundary of the site, with P22 running along the western boundary and P23 running along the northern boundary around Albert Village Lake. The site lies within the National Forest and within the catchment area of the River Mease Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). Access to the site is off Spring Cottage Road.
2. Donington Island as a site has a total area of approximately 42.75 hectares, that comprises of two main sections, divided by an internal haul road running south-west to north-east. The north-western section is referred to as phase one and the south-eastern section is referred to as phase two. The site offices and car parking are located on the eastern part of the site. Clay stocking takes place in the phase two and immediately north-west of the internal haul road in phase one. The remaining part of phase one contains materials required for restoration of the site.
3. The redline application boundary also includes an area to the south-east of Occupation Road. In the northern part of this area, planning permission was granted in April 2014 by North West Leicestershire District Council for the erection of one no. storage unit, fencing and associated parking. For the southern part of the area, planning permission was granted in January 2015 by North West Leicestershire District Council for the installation of up to 2000 panels in 16 parallel arrays with an output capacity of 500kW.
4. The nearest residential properties are located to the south-east along Spring Cottage Road, approximately 20 metres from the site at their closest. There are also residential properties located 280 metres to the north-west on Occupation Road.

Planning History

5. In April 1978, planning permission was granted for the extraction of coal and clay from land south of Albert Village. The applicant was the National Coal Board, and the development was referred to as 'Donington Extension'. The application, and subsequent permission, envisaged the storage of clay won in association with the coal extraction. Planning permission was granted by the County Council in

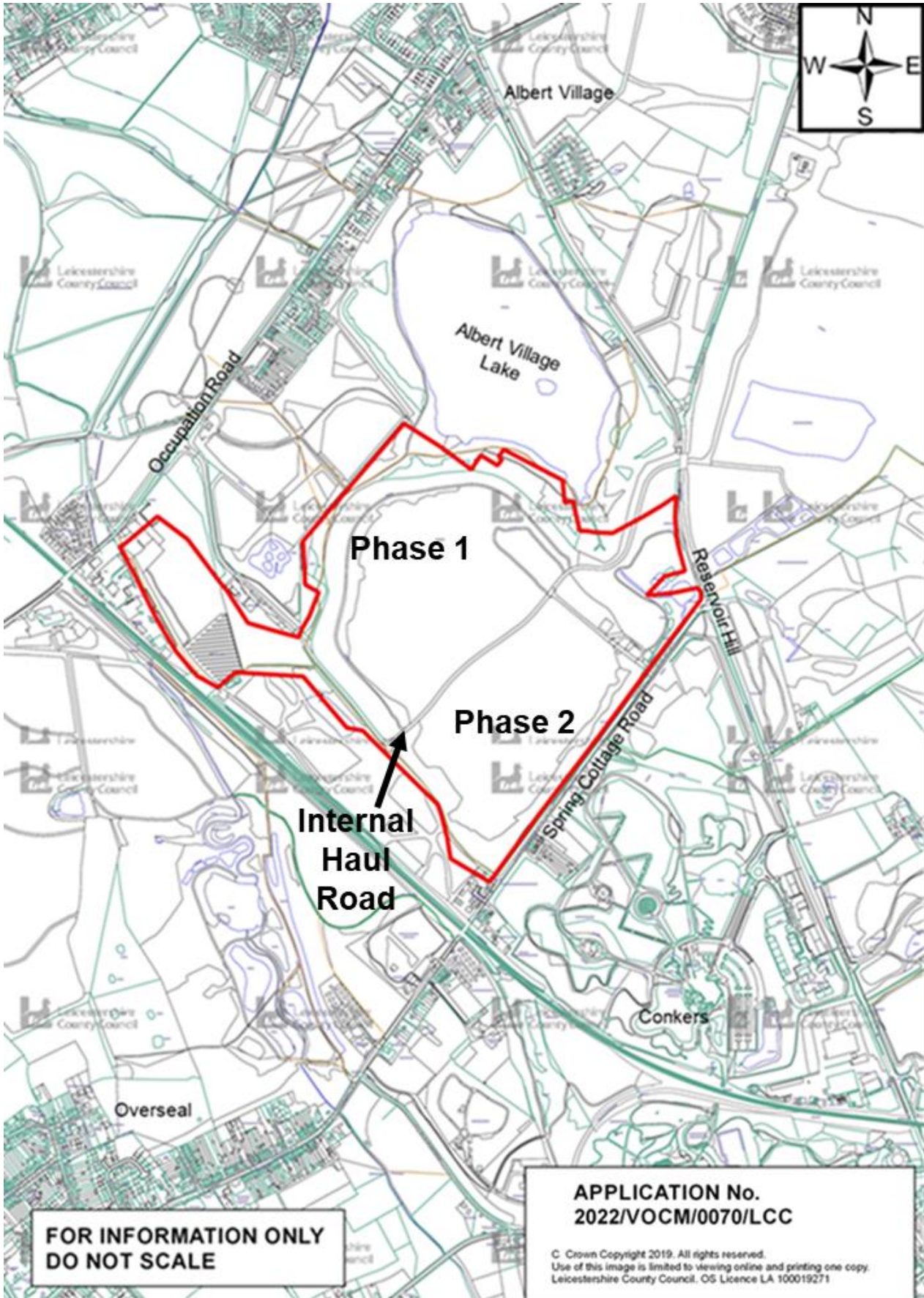
July 1978 for the temporary storage of refractory clays on the Donington site for a period up to 24th June 1994.

6. Planning permission was granted in December 1997 (reference 1997/0547/07) to retain the facility for clay stocking at the Donington site within a reduced site area for a period expiring on 31st December 2012. Further planning permission was granted in February 2010 (reference 2009/1207/07) for an extension of the expiry date of the clay stocking facility by 5 years to 31st December 2017.
7. Planning permission was granted in May 2015 to extend the use of the northern part of the site for clay stocking for a further 3 years until 31st December 2020 with the southern part retained for a further 15 years until 31st December 2032 (reference 2015/0991/07).
8. Planning permission was granted in November 2018 (reference 2017/1226/07) to allow for a temporary increase in HGV exports for a 12-month period. This time period ended July 2020.
9. In January 2020, a Non-Material Amendment (reference 2019-2205-07) application was permitted to allow for a 12-month extension for the submission of a restoration scheme.
10. Planning permission was granted in February 2021 (reference 2020/1610/07) to allow for an extension of time to delay restoration and submission of a detailed restoration scheme by 12 months.

Planning Background

11. Under the existing legal agreement, Wavin (the site owners), shall transfer land at Donington to the National Forest Charitable Trust (or such body responsible for the National Forest). In April 2022, the National Forest Charitable Trust merged with the National Forest Company to provide a single larger organisation that brings together the assets and expertise of the two charities to realise the shared ambitions for the National Forest as a whole and the heart of the forest area in particular. The Trust is seeking to create a vibrant heart for The National Forest. This will include a 1000-acre woodland park, in which CONKERS has already been created, with opportunities for walking, cycling and discovery in the emerging woodland environment. The Trust has adopted a 20-year strategic framework and master plan for the creation of the Heart of the National Forest Park which proposes that the Donington clay stocking site be remediated for a range of recreational uses including visitor accommodation and land and water-based leisure facilities. A Vision and Action Plan for the Heart of the National Forest was published in September 2009. This acknowledged that some key water-based leisure attractions planned for the area have been delayed; that the Donington site was now likely to come forward much slower than was originally envisaged (due to clay stocks not being used

as fast as was anticipated); that Donington will not be available in the short or medium term; and that some projects such as Donington 2 lakes are likely to come forward later in the plan period (2020 - 2026).



Description of Proposal

12. The planning application seeks to vary Conditions 4, 15, 30 and 31 of planning permission 2020/1610/07.

Condition 4

13. Condition 4 of the existing planning permission states:

“Permission for the retention of the clay stocking area within the area hatched blue on drawing no.14184/501 dated April 2015 shall be limited until a period expiring on 31st December 2021. All restoration earthworks within this area and seeding of the restored land shall be completed by 30th September 2023 in accordance with the restoration scheme approved in accordance with condition no.30 below. Final restoration (including all planting works) shall be completed by 31st December 2023.”

14. The proposal seeks to vary Condition 4 to extend the date for retention of the clay stocking area in phase one until 31st July 2023. The clay stocking area in phase one is a central strip across the site, located immediately north-west of the internal haul road which runs directly through Donington Island.
15. In addition, the proposal also seeks for an extension of time for the completion of the final restoration and all planting works by 30th September 2024.
16. In summary, the application therefore proposes to extend the date for retention of the clay stocking area in phase one by 19 months from 31st December 2021 to 31st July 2023 and the completion of final restoration and planting by 9 months from 31st December 2023 to 30th September 2024.

Condition 15

17. Condition 15 of the existing planning permission states:

“The importation of material shall be restricted to clays for blending purposes. Such importation shall not exceed a level of 20,000 tonnes per annum. Records of such importation shall be maintained on a monthly basis, and shall be made available to the Mineral Planning Authority at any time upon request.”

18. The proposal seeks to vary Condition 15 to permit the importation of soils and soil making materials to enable a suitable growing medium for wildflower grassland as there are currently no soils stored on site.
19. The proposal requires this variation as there is a need for soils and soil making materials to be imported to enable the growth for species rich grassland. The proposal seeks to import up to 25,000m³ of soils and soil making materials. The

materials are likely to be from local construction and demolition projects. As part of the importation process, it has been proposed within the application that with the interests of sustainability of the site, a statement could be submitted to the Mineral Planning Authority prior to importation of materials which includes details on the origin and type of material.

Conditions 30 and 31

20. Condition 30 of the existing planning permission states:

“a detailed restoration scheme for the area hatched blue on drawing no. 20235/103 dated October 2020 shall be submitted to the Mineral Planning Authority for approval by no later than 31st December 2021. The scheme shall include proposals for the restoration (including seeding, planting, landscaping) of that part of the site together with a timetable for the completion of the works.”

21. Condition 31 of the existing planning permission states:

“the area hatched pink on drawing no. 14184/501 dated April 2015 shall be restored in a progressive manner in accordance with a scheme of phasing which has been submitted to and approved in writing by the Mineral Planning Authority. The scheme of phasing shall be submitted to the Mineral Planning Authority by no later than 31st December 2022. The scheme shall specify a timetable for the submission of detailed restoration schemes and the completion of restoration works for each phase”

22. The proposal seeks to vary Condition 30 and 31 to extend the dates for the provision of the detailed restoration schemes for phase one and phase two until 31st July 2023 – which would delay the submission of the restoration schemes for phase one and phase two by 19 months from 31st December 2021 and by 7 months from 31st December 2022, respectively.

Details and reasons for the time extensions

23. The proposal to vary conditions, 4, 15, 30 and 31 is in order to provide a long-term resource for a number of national clayware manufacturing companies dependent on the facility, the various grades of fireclay stocked at Donington Island ensure that continued supply is maintained for blends used in the manufacture of products such as bricks, pipes and tiles.

24. Large volumes of economic clays are still stored on the phase one site and due to the uncertainty over the phase one restoration, the works to remove all the clay stocks could not be achieved within the previously permitted timescale. The proposal for an extension of time would avoid sterilisation of these economic clays and allow for a landform to be created that is suitable for any proposed

restoration scheme which can be agreed in principle by the County Council and the National Forest Company.

25. To comply with Condition 30 of the existing planning permission, a scheme was submitted to the Mineral Planning Authority in December 2021. The submitted scheme had been formed through discussions with the applicant (Wavin) and The Heart of the National Forest Trust (HOTNFT) for the site to be restored to leisure/amenity use including a large lake.
26. The HOTNFT ceased to exist on the 1st April 2022 and has been replaced by The National Forest Company which is taking over the responsibility of the site and currently reviewing and deciding upon what they require in terms of an end restoration scheme. Therefore, the extension of time is sought to allow The National Forest Company time to consider a revised restoration scheme.

Great Crested Newts

27. Condition 29 of the existing planning permission requires a Great Crested Newt (GCN) survey to be carried out prior to the commencement of any restoration works. As part of the application, the supporting statement states that Wavin have GCN surveys on-going.

Planning Policy

The Development Plan

28. Leicestershire Minerals and Waste Local Plan (adopted September 2019)

- Policy M6: Fireclay
- Policy DM2: Local Environment and Community Protection
- Policy DM5: Landscape Impact
- Policy DM12: Restoration, Aftercare and After-use

29. *North West Leicestershire Local Plan (adopted November 2017)*

- Policy D2: Amenity
- Policy En3: The National Forest

National Policy

30. *National Planning Policy Framework (NPPF) (2021)*

- Paragraph 11: Presumption in favour of sustainable development
- Paragraph 209: Facilitating the sustainable use of minerals
- Paragraph 211 (e): Provide for restoration and aftercare at the earliest opportunity

Consultations

31. **North West Leicestershire District Council** – No objections.
32. **Natural England** – No comments to make on the application.
33. **LCC Ecology** – No objections or comments to make on this application for an extension of time.
34. **LCC Landscape** - No objection and no further comments.
35. **National Forest Company (NFC)** – NFC are working with the applicant on the long-term future for this site as the current s106 agreement includes the potential transfer of the land to the NFC. Whilst the NFC would like to see the land restored at the earliest opportunity, the delay in submitting the details required under these conditions does allow for further work to be completed on the future use of the site which then allows the restoration to be designed in a way to facilitate that future use.
30. **North West Leicestershire District Council (Environmental Health), the Environment Agency, and Ashby Woulds Town Council** have not responded. Any response received will be orally reported.

Publicity and Representations

36. The application has been publicised by means of site notices and a press notice in accordance with the County Council's adopted Statement of Community Involvement.
37. One representation from the public has been received commenting about the amount of time the applicant has been allowed to submit an application seeking to delay restoration. The representation also raises concerns about the delay in restoration of the site for a number of years.
38. The issue raised is considered in the Assessment of Proposal section of this report.

Assessment of Proposal

39. The planning application seeks to vary the following conditions of Planning Permission 2020/1610/07:
 - a) Condition 4 - to extend the date for retention of the clay stocking area until 31st July 2023 and extend the completion of the final restoration and all planting works by 30th September 2024 in phase one.
 - b) Condition 15 - to permit the importation of soils and soil making materials.

- c) Conditions 30 and 31 to extend the dates for the provision of the detailed restoration schemes for phase one and phase two until 31st July 2023.

Planning Policy Assessment

40. The NPPF states that, since minerals are a finite natural resource, it is important to make best use of them to secure their long-term conservation (paragraph 209); and that Mineral Planning Authorities should plan for a steady and adequate supply of industrial minerals by, amongst other things, encouraging stockpiling so that important minerals remain available for use (paragraph 214). Fireclay is identified as one of the minerals which are necessary to meet society's needs. The NPPF also states that Mineral Planning Authorities should provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions (paragraph 211).
41. Leicestershire has dominated fireclay supply in England for many years. In the 1970s to early 1980s, large quantities of fireclay were selectively extracted with coal but stockpiled separately according to clay quality. This clay has been recognised as an important national resource. The availability of fireclays from opencast coal operations is likely to become increasingly limited, making the stockpiled clays even more important.
42. It is acknowledged that this is not the first extension of time for the restoration of Donington Island, and this application would further delay the restoration of the site, which does not accord with the NPPF's drive to have sites restored at the earliest opportunity. However, this must be balanced against securing the use of important minerals and producing a restoration scheme of high environmental standards.
43. Donington Island is a temporary stocking facility for fireclay, hosting as the principal source of fireclay within Leicestershire, the site contained around 546,500 tonnes of clay in stockpiles at the end of August 2022. The clays at Donington Island are a valuable resource for Wavin and a number of other national clayware manufacturing companies who are reliant on this material, so it is of local and national importance that these clays are not sterilised. Donington Island is an allocated site within the Leicestershire Minerals and Waste Local Plan as part of Policy M6 (Fireclay) which states that the County Council will ensure a steady and adequate supply of fireclay by establishing a temporary stocking and blending facility within the Donington Island Site, subject to site-specific planning requirements including:
- a) Rationalisation of the current stocking and blending area to achieve a reduced footprint of the working area within an agreed timetable and utilising the minimum area of land necessary to maintain supplies of fireclay.

- b) Details of the routeing of HGVs so as to avoid local communities as far as is reasonably practicable.
 - c) Surveys of site and surroundings to determine the value of existing habitats and whether Great Crested Newts are on site.
 - d) Provision of a phased landscaping scheme incorporating the retention and enhancement of existing boundary vegetation.
 - e) Assessment of flood risk.
 - f) Timely restoration of those areas no longer utilised to stock and blend clay.
 - g) Restoration to include species-rich grassland, wetland, and native deciduous woodland.
44. The proposal seeks the following: extend the date for the retention of the clay stocking area until 31st July 2023; extend the dates for the provision of the detailed restoration schemes for phase one and phase two until 31st July 2023; and an extension of time for the completion of the final restoration and all planting works for phase one by 30th September 2024. Any grant of planning permission would accord with parts (a) – (e) inclusive of Policy M6 of the Leicestershire Minerals and Waste Local Plan.
45. As part of the existing planning permission, Condition 30 requires that a detailed restoration scheme be submitted to the Mineral Planning Authority for approval before 31st December 2021 – this was undertaken, however the details submitted were insufficient and did not accord with part (g) above, which is a requirement of Policy M6 of the Leicestershire Minerals and Waste Local Plan. Therefore, to enable a high standard restoration plan to be submitted, more time is sought from the Minerals Planning Authority by the applicant (Wavin), to work with the National Forest to design a restoration scheme which facilitates its future uses and accords with the requirements of policies M6.
46. In light of the above, the proposal is considered acceptable in accordance with the NPPF and Policy D6 of the Leicestershire Minerals and Waste Local Plan.

River Mease SSSI and Special Area of Conservation (SAC)

47. The site lies within the catchment area of the River Mease SSSI and SAC. The Conservation (Natural Habitats etc.) Regulations 2017 requires that an “Appropriate Assessment” be made in respect of any decision to be taken for any permission for a project which either alone or in combination with other plans or projects would be likely to have a significant effect on a European Site and is not directly connected with the management of the site for nature conservation. In this instance, Natural England have no comments to make on the variations of Conditions 4, 15, 30 and 31.
48. The existing planning permission (2020/1610/07) received comments from Natural England in which, Natural England considered that the proposed

development will not have likely significant effects on the River Mease Special Area of Conservation and will not damage or destroy the interest features.

49. Donington Island lies within the catchment area of the River Mease SSSI and SAC, therefore a screening assessment was undertaken to screen if the proposal is directly connected with or necessary for the conservation management of a European site or risks having a significant effect on a European site on its own or in combination with other proposals. This screening is set out in Appendix A of this report and concluded that the proposal would not have a significant adverse effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI and in this case an Appropriate Assessment is not required.

Local Environment

50. The delay in the restoration, the retention of the stockpiles and the importation of soils will result in the site operating for a longer period than previously consented, which will impact the local environment and community. The planning permission will continue to have the appropriate measures to protect against any detrimental impacts on the amenity and health of people and the environment, which includes, but not limited to restrictions on working hours, a dust action plan, dust and noise monitoring and noise limits.
51. Subject to the existing conditions being carried forward with the grant of planning permission, the proposal is considered acceptable in accordance with Policy DM2 of the Leicestershire Minerals and Waste Local Plan.

Landscape and Visual Impact

52. The site lies within the National Forest. As the proposal is a delay in the restoration, importation of soils and soil making materials and the retention of a clay stocking area, it is not a new development and is not required to contribute towards the creation of the forest in accordance with National Forest Planting Guidelines.
53. It is recognised that the proposal delays the restoration, however, by doing so it enables the applicant and The National Forest Company to work together with the Mineral Planning Authority to design a scheme that is integral to the Trust's vision of attracting visitors to the area whilst improving the environment and according with Leicestershire Minerals and Waste Local Plan. Therefore, the proposal is in accordance with Policy En3 of the North West Leicestershire Local Plan.

Restoration, After-use and Long-Term Management

Importation of Soils

54. The proposal incorporates the variation of Condition 15 to permit the importation of 25,000m³ of soils and soil making materials for the restoration of the site. As part of the application, the applicant has suggested a statement could be submitted to the Mineral Planning Authority prior to importation of materials which includes details on the origin and type of material.
55. In certain restoration cases, where insufficient soils exist on site the applicant will need to make provision to ensure that adequate soils or soil making materials are available to restore the site satisfactorily. The manner in which the soil materials are handled is a key element, including storage methods, timing and means of soil movements, and machinery to be used will be required. Therefore, it is recommended that a condition is imposed requiring details relating to the origin, use, storage, and movement of soils to be submitted to the Mineral Planning Authority prior to the importation of materials. Subject to such a condition, this aspect is in accordance with Policy DM12 of the Leicestershire Minerals and Waste Local Plan.

Restoration

56. As part of the application, it is proposed to extend the date for retention of the clay stocking area, located on a central strip across the site, immediately north-west of the internal haul road, by 19 months. This would extend the duration of clay stocking in this area from 31st December 2021 to 31st July 2023.

Phase One

57. Phase one of Donington Island is to the north of the internal haul road. The application submission proposes to delay the submission of the phase one restoration scheme by 19 months, from 31st December 2021 to 31st July 2023, which in turn will extend the overall restoration timeframes for the site, delaying the full restoration of the site by 9 months, from 31st December 2023 to 30th September 2024.
58. As per the existing planning permission, a restoration scheme was submitted to the Mineral Planning Authority in December 2021 for phase one. However, the scheme was not of a high environmental standard, lacked detail and did not comply with the site's legal agreement or the site allocation requirements within the Leicestershire Minerals and Waste Local Plan. Discussions took place between the applicant (Wavin), Mineral Planning Authority, Leicestershire County Council Landscape and Ecology Officers and the National Forest and it was agreed that due to the recent changes to the National Forest Charitable Trust and in order to get a restoration scheme of a high environmental standard

which is policy compliant and takes into account phase Two of the site, more time was required to allow for the National Forest Company and Wavin to create a concept that is not only achievable for Wavin but also integral to the Trust's vision of attracting visitors to the area whilst improving the environment.

Phase Two

59. Phase two of Donington Island comprises the area to the south of the internal haul road. The application submission proposes to delay the submission of the phase two restoration scheme by 7 months, from 31st December 2022 to 31st July 2023.
60. As part of the existing planning permission, retention of the clay stocking area in phase two can operate until 31st December 2032 and final restoration will be completed by 31st December 2033. The restoration of phase two will remain as permitted and no further variations are proposed.
61. The delay of 7 months in the submission of the restoration scheme for phase two is to allow the whole of Donington Island to be submitted under one restoration scheme, rather than phase one and phase two being considered separately and in isolation. This should enable the site to be viewed within its wider surroundings, comply with national policy by creating a restoration scheme of a high environmental standard, comply with the site allocation requirements as set out in the Leicestershire Minerals and Waste Local Plan whilst allowing enough time for the National Forest Company to work with Wavin on the long-term future use of the site.
62. A representation was received in relation to the time extension to the restoration. It has been acknowledged by the applicant that delaying the restoration of the site doesn't accord with policy and the NPPF's encouragement to carry out restoration and aftercare at the earliest opportunity. However, National Policy also emphasises that restoration should be carried out to high environmental standards. The key reason for the application being submitted is to allow for a restoration scheme that is of a high standard. The time extension will result in the site operating for a longer period than previously consented, which will impact the local environment and community. However, the planning permission will continue to have the appropriate measures to protect against any detrimental impacts on the amenity and health of people and the environment. On balance, producing a high standard restoration scheme is more significant than having Donington Island restored within the current timescales but to a poor standard and sterilising nationally and locally important clays.
63. The NFC expressed that whilst it would like to see the land restored at the earliest opportunity, the delay in submitting the details required under these conditions does allow for further work to be completed on the future use of the

site which then allows the restoration to be designed in a way to facilitate that future use. Although it is particularly important that temporary development sites are properly restored, the proposal to delay the submission of the restoration schemes of phase one and two and the final restoration date of phase one, will safeguard an important raw material in accordance with the NPPF and the Development Plan. It is considered that the importance of the clay stocking facility overrides the delay in the restoration of the site that will inevitably result. In addition, the delay in the submission of the restoration scheme will enable a high-quality restoration scheme to be submitted, which meets the requirements of the NFC, is achievable by Wavin whilst complying with policy and site allocation requirements. Therefore, the proposal is acceptable in accordance with Policy DM12 of the Leicestershire Minerals and Waste Local Plan.

64. It is important that mineral sites are properly restored, in which phased restoration is the most favoured option, in accordance with the NPPF and the Leicestershire Minerals and Waste Local Plan. Despite the application delaying the submission of the restoration schemes for the site to be considered as a whole to provide the highest possible standard for the restoration of the site, the overall restoration of the site, even with phase one being delayed will remain phased, with phase one being completed by 30th September 2024 and phase two being completed by 31st December 2023.
65. To summarise, it is acknowledged that by allowing this proposal, there would be a delay in the submission of the restoration schemes and the overall restoration of phase one. However, this must be balanced against securing the use of important materials and the submission of a restoration scheme that is of a high environmental standard. The clays at Donington Island are a valuable resource for Wavin and a number of other national clayware manufacturing companies who are reliant on these clays, so it is of local and national importance that these clays are not sterilised. The final restoration of phase two remains unchanged, with the clay stocking in phased two expiring on 31st December 2021 and the final restoration (including all planting works) shall be completed by 31st December 2023. Therefore, on balance the proposal for the retention of clay stocks in phase one for an additional 19 months, the delay in the submission of the phase one and phase two restoration schemes by 19 and 7 months respectively, and the overall delay in the phase one final restoration by 9 months is acceptable in order to maintain an area for continued clay stocking and blending and ensure a sufficient supply of fireclay to serve local manufacturing provision in accordance with the NPPF and Policy M6 of the Leicestershire Minerals and Waste Local Plan, whilst also enabling a high-quality restoration scheme to be submitted which is acceptable in accordance with Policy DM12 of the Leicestershire Minerals and Waste Local Plan.

Aftercare

66. The existing planning permission includes a condition which requires restored land to be treated and managed over a period of at least 5 years in accordance with an aftercare scheme.
67. Subject to the existing condition being carried forward with the grant of planning permission, the proposal is considered acceptable in accordance with Policy DM12 of the Leicestershire Minerals and Waste Local Plan.

Public Rights of Way

68. Public Rights of Way P39 runs along the south-west boundary of the site, with P22 running along the western boundary and P23 running along the northern boundary around Albert Village Lake. The proposal will not impact the public right of way network or impact the amenity of the rights of way users, and therefore the development is considered acceptable.

Traffic and Access

69. The proposal seeks to vary four planning conditions in relation to extending the final restoration date for the site and permit the importation of soils and soil making materials. As part of the application there are no alterations to the existing site access arrangements or vehicle movements.
70. The existing planning permission includes a condition which restricts the total number of lorry movements (in and out) for any working day, associated with the transportation of clay shall not exceed 88 movement. In addition, there are also conditions which restrict the access to the site via Spring Cottage Road only, along with the inclusion signage to make sure heavy vehicles turn left only onto Spring Cottage Road.
71. Subject to the existing conditions being carried forward with the grant of planning permission, the proposal is considered acceptable in accordance with Policy D2 of the Leicestershire Minerals and Waste Local Plan.

Legal Agreement

72. Donington Island clay stocking site is the subject of an existing legal agreement which covers HGV routeing, transfer of land to the National Forest Charitable Trust, public access, and aftercare management.
73. Any grant of planning permission for the proposed development would be subject to the prior completion of an update to the existing legal agreement. The legal agreement associated with this planning permission would include all aspects of the existing Section 106 agreement, which includes: HGV routeing, transfer of land to the National Forest Charitable Trust, public access, and aftercare management. The applicant would be expected to cover all

reasonable costs incurred by the County Council in the drafting and execution of the agreement.

Conclusion

74. The planning application seeks to vary the following conditions of Planning Permission 2020/1610/07:
- a) Condition 4 - to extend the date for retention of the clay stocking area until 31st July 2023 and extend the completion of the final restoration and all planting works by 30th September 2024 in phase one.
 - b) Condition 15 - to permit the importation of soils and soil making materials.
 - c) Conditions 30 and 31 to extend the dates for the provision of the detailed restoration schemes for phase one and phase two until 31st July 2023.
75. It is considered that the various measures contained within the planning application together with the imposition of conditions and completion of a legal agreement will mean that the proposed development would not cause unacceptable impact to local residents and the local environment. In addition, the delay in restoration would avoid sterilisation of nationally and locally important clay whilst also enabling a higher quality restoration scheme to be submitted.
76. It is therefore recommended that the proposed development be permitted subject to the imposition of conditions and the completion of a legal agreement.

Statement of Positive and Proactive Engagement

77. In determining this application, the Minerals Planning Authority has worked positively and proactively with the applicant by entering into pre-application discussion; assessing the proposals against relevant Development Plan policies; all material considerations; consultation responses and the representations that have been received. This approach has been in accordance with the requirement set out in the National Planning Policy Framework.

Recommendation

Recommendations in support of an application:

78. PERMIT subject to the conditions set out in Appendix B and the prior completion of a S106 legal agreement covering HGV routeing, transfer of land, public access and aftercare management.

Officer to Contact

Katie Ferguson (Tel: 0116 305 7325)

Habitats Regulations Assessment Screening

Part 6 (Regulations 63 and 64) of The Conservation of Habitats and Species Regulations 2017 (as amended)

PROJECT: Variation of Conditions 4 (clay stocking), Condition 15 (importation of material), Condition 30 and 31 (provision of detailed restoration scheme) of Planning Permission 2020/VOCM/0156/LCC) – Donington Island Clay stocking Site, Spring Cottage Road, Ashby Woulds, DE12 6NA.

Location and Description of Proposal

The planning application seeks to vary Condition 4, to extend the date for retention of the clay stocking area in phase one until 31st July 2023 and an extension of time for the completion of the final restoration and all planting works by 30th September 2024; Condition 15, permit the importation of soils and soil making materials; Conditions 30 and 31, to extend the dates for the provision of the detailed restoration schemes for phase one and phase two until 31st July 2023 – which would delay the submission of the restoration schemes for phase one and phase two by 19 months from 31st December 2021 and by 7 months from 31st December 2022, respectively; of planning permission 2020/1610/07.

The Donington Island clay stocking site is located within the Ashby Woulds, to the south of Albert Village. The site is bounded to the north by Albert Village Lake and to the east by Reservoir Hill and Spring Cottage Road, beyond which is the Conkers tourist attraction. To the south and south-west there is existing vegetation, residential properties and a railway beyond the vegetation. To the west is the Swainspark Industrial Estate.

The site lies within the National Forest and within the catchment area of the River Mease Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). Access to the site is off Spring Cottage Road.

Interest Features

The River Mease Special Area of Conservation (SAC) is classified on the basis of:

- Floating formations of water crowfoot (*Ranunculus*) of plain and sub-mountainous rivers;
- Populations of bullhead (*Cottus gobio*);
- Populations of spined loach (*Cobitis taenia*);
- Populations of white-clawed crayfish (*Austropotamobius pallipes*);

And the river and adjoining land as habitat for:

- Populations of otter (*Lutra lutra*)

Is the proposal directly connected with or necessary to management of the site for nature conservation?

The proposal is not connected with or necessary to the management of the site for nature conservation purposes. Therefore, a Habitats Regulation Assessment Screening has been undertaken to assess the potential implications of the proposal on the SAC.

Significance Test and Assessment of implications of the proposal on the integrity of the European Site

The site lies within the catchment area of the River Mease Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC) .

The proposal is for the variation of four conditions, relating to the delay the submission of restoration schemes, the delay in the overall restoration of phase one of the site and the importation of soil and soil making materials.

In this instance, it is considered that the proposed development will not have likely significant effects on the River Mease Special Area of Conservation and will not damage or destroy the interest features. The County Council is consequently not required to carry out an Appropriate Assessment.

Conclusion

Overall, it is considered that the proposal would not have a significant adverse effect on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI and in this case an Appropriate Assessment is not required.

Signed



Date: 21st September 2022

Conditions

General

1. The permission relates to the extension of the life of the clay stocking facility at Donington Island within the land shown edged red on Drawing no.14184/500 dated April 2015 submitted with the planning application (2015/0991/07).

Reason: For the avoidance of doubt, to ensure the development is carried out in a satisfactory manner, and to provide for the completion and restoration of the site within an agreed timescale in the interests of the amenities of the area.

2. Operations associated with the clay stocking facility shall only be carried out within the area bounded by the existing perimeter bund forming part of the current site layout as shown on Drawing no.14184/500 dated April 2015 submitted with the planning application (2015/0991/07).

Reason: For the avoidance of doubt, to ensure the development is carried out in a satisfactory manner, and to provide for the completion and restoration of the site within an agreed timescale in the interests of the amenities of the area.

Duration

3. Permission for the retention of the clay stocking area within the area hatched blue on drawing no.14184/501 dated April 2015 shall be limited until a period expiring on 31st July 2023. Final restoration (including all planting works) shall be completed by 30th September 2024.

Reason: For the avoidance of doubt, to ensure the development is carried out in a satisfactory manner, and to provide for the completion and restoration of the site within an agreed timescale in the interests of the amenities of the area.

4. Permission for the retention of the clay stocking area within the area hatched pink on drawing no.14184/501 dated April 2015 shall be limited until a period expiring on 31st December 2032. Within 12 months of that date, this area shall have been restored in accordance with the restoration schemes approved in accordance with condition no.32 below.

Reason: For the avoidance of doubt, to ensure the development is carried out in a satisfactory manner, and to provide for the completion and restoration of the site within an agreed timescale in the interests of the amenities of the area.

Restriction of Permitted Development Rights

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, replacing or re-enacting that Order), no additional fixed plant or machinery, buildings, structures, erections, lights and fences shall be erected, extended, or installed at the site without the prior approval in writing of the Mineral Planning Authority.

Reason: To protect the amenities of the area/In the interests of local amenity.

Hours of Operation

6. Except in emergencies (which shall be notified to the Mineral Planning Authority as soon as practicable):
 - (a) no operations shall be carried out at the site except between the following times:
0700 hours and 1900 hours Monday to Friday; and
0700 hours and 1300 hours Saturday;
 - (b) no operations associated with the removal of material from any environmental banks and storage areas shall be carried out within 200 metres of any occupied residential property except between 0900 hours and 1700 hours Monday to Friday;
 - (c) no operations shall be carried out at the site on Sundays or public or bank holidays.

Reason: To afford adequate visibility at the access/junction to cater for the expected volume of traffic joining the existing highway network and in the interests of general highway safety.

Access

7. There shall be no vehicular access to or from the site for any purpose in connection with the development hereby permitted except by Spring Cottage Road.

Reason: In the interests of highway safety and the amenities of the area.

8. Visibility splays of 2.4 metres by 104 metres shall be provided at the junction of the access with Spring Cottage Road. These shall be in accordance with the standards contained in the current County Council design guide and shall thereafter be permanently so maintained. Nothing shall be allowed to grow above a height of 0.6 metres above ground level within the visibility splays.

Reason: To afford adequate visibility at the access/junction to cater for the expected volume of traffic joining the existing highway network and in the interests of general highway safety.

9. The total number of lorry movements (in and out) for any working day (averaged over 5 working days) associated with the transportation of clay shall not exceed 88 via the access onto Spring Cottage Road.

Records of such lorry movements shall be maintained on a daily basis, and shall be made available to the Mineral Planning Authority at any time upon request. All records shall be kept for at least 12 months.

Reason: In the interests of highway safety and the amenities of the area.

10. The access onto Spring Cottage Road shall be provided with adequate wheel cleaning facilities. Such facilities shall be maintained and used as may be necessary to ensure that no mud or other detritus is carried onto the highway. The Site Compound off Spring Cottage Road shall be laid out in accordance with the details set out in Drawing No.14184/504 dated September 2015.

Reason: In the interests of highway safety and to prevent mud and dust being deposited on the highway.

11. The surfacing of the site access shall be maintained in a good state of repair and kept clean and free of mud and other debris at all times throughout the duration of the operations hereby permitted. Cut off drains shall be provided within the site in order to ensure that no clay enters the public highway which has the potential to block up the highway drainage system in the vicinity.

Reason: In the interests of highway safety and to prevent mud and dust being deposited on the highway.

12. All heavy vehicles (over 1.5 tonnes unladen) leaving via the accesses off Spring Cottage Road shall turn left only onto Spring Cottage Road. Signs erected to advise drivers of the approved vehicle routes shall be maintained for the duration of the operations hereby permitted.

Reason: In the interests of highway safety and the amenities of the area.

13. No laden lorry shall leave the site and enter the public highway unless it is sheeted.

Reason: In the interests of highway safety and the amenities of the area.

Importation of Clays

14. The importation of material shall be restricted to clays for blending purposes and soils and soil making materials for restoration purposes. Such importation shall not exceed a level of 20,000 tonnes per annum. Records of such importation shall be maintained on a monthly basis, and shall be made available to the Mineral Planning Authority at any time upon request.

Reason: To protect the amenities of the area and in the interests of local amenity.

15. The importation of clay shall only be carried out between the hours of 0700 hours and 1900 hours Monday to Friday and 0700 hours and 1300 hours Saturdays. No importation shall take place on Sundays or public or bank holidays.

Reason: To protect the amenities of the area/In the interests of local amenity.

16. Prior to the importation of soils or soil making materials a statement, including details on the origin, storage, movements, handling, use, and type of material, shall be submitted to, and approved in writing by, the Mineral Planning Authority.

Reason: To protect the amenities of the area and in the interests of local amenity.

Dust

17. All operations shall be carried out in a manner to minimise the emission of dust from the site. In order to minimise any dust created by site activities, measures shall be taken as specified in the Dust Action Plan set out in paragraph 6.2.8 of the 2015/0991/07 planning application supporting statement, dated September 2015.

Reason: To protect the amenities of the locality from the effects of dust arising from the development.

18. If, in the opinion of the Mineral Planning Authority, any operations on site give rise to unacceptable levels of dust leaving the site, such as during adverse conditions due to strong winds combined with dry weather, such operations shall be temporarily suspended until such time as the operations can be resumed without causing such nuisance, either by a change in working, weather conditions or by taking other additional measures.

Reason: To protect the amenities of the locality from the effects of dust arising from the development.

19. Dust monitoring shall be carried out at six monthly intervals along the perimeter bund, at the locations show on Plan 14184/503 in accordance with paragraph 6.2.9 of the planning statement accompanying the 2015/0091/07 planning application.

Reason: To protect the amenities of the locality from the effects of dust arising from the development.

Noise

20. Measures shall be taken within the site to ensure that the best practicable means are used to control the emission of noise from the site and to ensure so far as is reasonably practicable that the operations carried out within the site do not give rise to nuisance at nearby residential properties. Such measures shall include those set out in paragraphs 6.3.7 – 6.3.10 of the planning statement accompanying the 2015/0091/07 planning application.

Reason: To minimise the adverse impact of noise from site operations on local residents.

21. Except for operations defined in condition no.22 below, noise levels from operations within the site shall not exceed 55dB LAeq (1 hour), freefield at any noise sensitive property.

Reason: To minimise the adverse impact of noise from site operations on local residents.

22. Noise levels arising from the removal of perimeter soil/clay mounds and restoration activities (temporary operations) shall be minimised as far as is

reasonably practicable and in any case should not exceed 70dB LAeq (1 hour), freefield at any noise sensitive property. Such temporary operations which exceed the normal day to day criterion set out in condition no.21 above shall only be carried out between the hours of 0900 and 1700 Monday to Friday and shall be limited to a total of 8 weeks in any 12 month period for any individual noise sensitive property. At least 3 days prior notice of the commencement of such temporary operations shall be given to the Mineral Planning Authority. A written record shall be kept of the dates that these activities are taking place and made available on request.

Reason: To minimise the adverse impact of noise from site operations on local residents.

23. Noise monitoring shall be carried out at three monthly intervals for the duration of the planning permission period in accordance with the details set out in paragraphs 6.3.11 – 6.3.13 of the statement accompanying the 2015/0091/07 planning application. Noise monitoring results shall be provided to the Mineral Planning Authority. The monitoring scheme shall be kept under regular review and may be varied or amended by agreement with the Mineral Planning Authority.

Reason: To minimise the adverse impact of noise from site operations on local residents.

24. In the event that noise monitoring indicates that the levels set out in condition nos. 21 and 22 above are being exceeded, the operations generating that noise shall cease as soon as the monitoring identifies the breach. The Mineral Planning Authority shall be notified immediately, and appropriate remedial measures agreed and undertaken as soon as reasonably practicable.

Reason: To minimise the adverse impact of noise from site operations on local residents.

Other Environmental Protection

25. Measures shall be taken and the development carried out in such a manner as to ensure that, so far as is reasonably practicable, the operations carried out within the site do not give rise to nuisance at nearby residential properties by reason of illumination. So far as is reasonably practicable, lights shall not be directed beyond the boundaries of the site particularly during hours of darkness.

Reason: To protect the amenities of the area/In the interests of local amenity.

26. There shall be no unlicensed discharge of foul or contaminated drainage from the site into either groundwater or any surface waters, whether direct or via soakaways.

Reason: To prevent pollution of the water environment.

27. Surface water management arrangements for the site shall be undertaken in accordance with the Surface Water Management Plan prepared by S.M.Foster Associates Limited dated 28th September 2015 (Ref:033/38/swmp/0915), as amended by the Addendum dated December 2015.

Reason: To prevent pollution of the water environment.

Landscaping

28. The existing bund around the clay stocking area shall be retained and managed throughout the duration of clay stocking operations to maintain satisfactory vegetation cover, weed control and to avoid erosion and waterlogging. All necessary steps shall be taken to destroy weeds at an early stage of growth to prevent seeding.

Reason: To protect visual amenity in the locality.

Ecology

29. Prior to the commencement of restoration works within the area hatched blue on drawing no. 14184/501 dated April 2015, a great crested newt survey shall be carried out for all ponds within the site, including any new ponds or temporary water bodies, and submitted to the Mineral Planning Authority. If the survey shows that Great Crested Newts are present, a mitigation plan shall be submitted to the Mineral Planning Authority for approval.

Reason: To minimise the effects on nature conservation interests.

Restoration

30. A detailed restoration scheme for the area hatched blue on drawing no. 20235/103 dated October 2020 shall be submitted to the Mineral Planning Authority for approval by no later than 31st July 2023. The scheme shall include proposals for the restoration (including seeding, planting, landscaping) of that part of the site together with a timetable for the completion of the works. Restoration shall take place in accordance with the approved scheme.

Reason: In the interests of satisfactory restoration of the site.

31. The area hatched pink on drawing no. 14184/501 dated April 2015 shall be restored in a progressive manner in accordance with a scheme of phasing which has been submitted to, and approved in writing by, the Mineral Planning Authority. The scheme of phasing shall be submitted to the Mineral Planning Authority by no later than 31st July 2023. The scheme shall specify a timetable for the submission of detailed restoration schemes and the completion of restoration works for each phase.

Reason: In the interests of satisfactory restoration of the site.

32. Detailed restoration schemes for each phase shall be submitted to the Mineral Planning Authority for approval in accordance with the timetable set out in the scheme of phasing approved pursuant to condition no.31 above. The schemes shall include proposals for the ultimate removal of all plant, buildings, structures, machinery, roads and hardstandings, and stored materials, the restoration of the site to a condition suitable for an agreed afteruse, and the seeding, planting and landscaping of the site in a manner appropriate to the afteruse to which the

site is to be put. Restoration shall be carried out in accordance with the timescales and details as approved.

Reason: In the interests of satisfactory restoration of the site.

33. The restoration schemes submitted pursuant to condition nos.30 and 32 above should include detailed information on the composition of the clays and soil making materials with a method statement on how the material is to be deposited to avoid compaction. In addition, the method statement should outline how deficiencies in soil nutrients are to be mitigated by incorporation of imported organic material.

Reason: In the interests of satisfactory restoration of the site.

Aftercare

34. Following the restoration of any part of site in accordance with condition nos.30 and 32 above, the restored land shall be treated and managed over a period of at least 5 years in accordance with an aftercare scheme which has previously been submitted to and approved in writing by the Mineral Planning Authority. The submitted scheme shall specify the steps that will be taken to bring the newly restored land to a condition capable of long term beneficial use. The scheme shall be submitted within 6 months of the date of approval of the restoration schemes submitted under condition nos.30 and 32 above.

Reason: To ensure the site is restored to a condition suitable for long term beneficial use.

DEVELOPMENT CONTROL AND REGULATORY BOARD

The considerations set out below apply to all the preceding applications.

EQUALITY AND HUMAN RIGHTS IMPLICATIONS

Unless otherwise stated in the report there are no discernible equality and human rights implications.

IMPLICATIONS FOR DISABLED PERSONS

On all educational proposals the Director of Children and Family Services and the Director of Corporate Resources will be informed as follows:

Note to Applicant Department

Your attention is drawn to the provisions of the Chronically Sick and Disabled Person's Act 1970 and the Design Note 18 "Access for the Disabled People to Educational Buildings" 1984 and to the Equality Act 2010. You are advised to contact the Equalities function of the County Council's Policy and Partnerships Team if you require further advice on this aspect of the proposal.

COMMUNITY SAFETY IMPLICATIONS

Section 17 of the Crime and Disorder Act 1998 places a very broad duty on all local authorities 'to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all reasonably can to prevent, crime and disorder in its area'. Unless otherwise stated in the report, there are no discernible implications for crime reduction or community safety.

BACKGROUND PAPERS

Unless otherwise stated in the report the background papers used in the preparation of this report are available on the relevant planning application files.

SECTION 38(6) OF PLANNING AND COMPULSORY PURCHASE ACT 2004

Members are reminded that Section 38(6) of the 2004 Act requires that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Any relevant provisions of the development plan (i.e. any approved Local Plans) are identified in the individual reports.

The circumstances in which the Board is required to "have regard" to the development plan are given in the Town and Country Planning Act 1990:

- Section 70(2) : determination of applications;
- Section 77(4) : called-in applications (applying s. 70);
- Section 79(4) : planning appeals (applying s. 70);
- Section 81(3) : provisions relating to compensation directions by Secretary of State (this section is repealed by the Planning and Compensation Act 1991);
- Section 91(2) : power to vary period in statutory condition requiring development to be begun;
- Section 92(6) : power to vary applicable period for outline planning permission;
- Section 97(2) : revocation or modification of planning permission;
- Section 102(1) : discontinuance orders;
- Section 172(1) : enforcement notices;
- Section 177(2) : Secretary of State's power to grant planning permission on enforcement appeal;
- Section 226(2) : compulsory acquisition of land for planning purposes;
- Section 294(3) : special enforcement notices in relation to Crown land;
- Sched. 9 para (1) : minerals discontinuance orders.



DEVELOPMENT CONTROL AND REGULATORY BOARD

13 OCTOBER 2022

REPORT OF THE DIRECTOR OF CORPORATE RESOURCES

LEICESTERSHIRE COUNTY COUNCIL **COUNTRY PARKS BYELAWS**

Purpose of Report

1. To seek approval to update the byelaws for each of the Country Parks and other informal rural recreation areas in the County managed by the County Council.

Background

2. All Country Parks and recreational sites managed by the Country Parks Service are covered by Byelaws introduced in 2003, with the exception of the Brampton Valley Way, Market Harborough (adopted in 1990). A Byelaw is a local law, which is made by a local authority. If there is already legislation covering a matter causing concern then a Byelaw is not normally considered suitable. Since Byelaws create criminal offences they must be confirmed by the Secretary of State before they can come into effect. These Byelaws will be made under Section 41 of the Countryside Act 1968, following procedure laid down in the Local Government Act 1972. The delegated function of the Board includes the consideration of Byelaws. By virtue of Article 4 of the County Council's Constitution the final decision will be made by the County Council following the consultation process this report requests be authorised.
3. In a meeting of the council on 30th September 2020, a motion was passed to:

“Require officers to introduce a condition of contract relating to outdoor events and organised functions on land or property owned and/or controlled by the County Council to prohibit the release of any sky lantern or helium balloons regardless of purpose.”

Proposals

4. It is proposed to revoke the 2003 Byelaws to be replaced with updated Byelaws which fulfil the decision of full council, as well as reflect changes in technology and site usage. No changes will be made to the Brampton Valley Way Byelaws.

5. Officers consider the current Byelaws now need updating so they can cover/address the following issues:
 - a. Inclusion definition of electrically powered cycles;
 - b. Prohibition of use of BBQs and camping stoves;
 - c. Inclusion and prohibition of sky lanterns;
 - d. Inclusion and prohibition of the release of fire works;
 - e. Improved clarity over the use of model boats;
 - f. Inclusion and prohibition of dogs from designated playgrounds and other specified areas;
 - g. Inclusion of dogs on leads areas and dogs on leads by direction;
 - h. Inclusion and clarity of the use of model electric cars;
 - i. Inclusion and clarity of the use model aircraft and drones;
 - j. Inclusion, prohibition and clarity on permission for flyers, graffiti, musical entertainment and firearms.
6. Post the Covid-19 pandemic, the number of visitors using parks, and levels of dog ownership has increased dramatically, as has the reported incidences of anti-social behaviour associated with fires & BBQs, electrically powered cycles, scooters, and the flying of drones. The amendments now being suggested if confirmed will help the Ranger Services in conjunction with the Police, to address these problems more effectively.
7. The Department of Levelling Up Housing and Communities has been consulted informally. Appendix A is the Proposed Byelaws to apply in each Country Park. Appendix B is the schedule of Country Parks.
8. Prior to adoption, the Byelaws must be advertised in local newspapers. Following their confirmation, they will be displayed on site. Standard fines will be introduced for contravention of the Byelaws. Any additional costs will be met from the appropriate Departmental budgets.
9. Following the conclusion of the consultation a further report will be brought back to the Board to detail next steps.

Consultation

10. The Director of Law and Governance has been consulted on this report and the Byelaws proposed.
11. Subject to agreement of the Board, a twelve week consultation period will be undertaken.

Equality and Human Rights Implications

12. None that can be quantified at this time.

Recommendations

13. The Director of Corporate Resources be authorised:
 - (a) To commence consultation on amending the current byelaws for all country parks listed in Appendix B to the byelaws listed in Appendix A; and
 - (b) to consult informally with DLUHC, Natural England and other statutory bodies;
14. The Director of Corporate Resources be requested to report on the outcome of the consultation back to the Development Control and Regulatory Board.

Reason for Recommendations

15. To provide a more effective means of dealing with day-to-day management issues and problems experienced on Country Parks and other recreational sites.

Circulation under Local Issues Alert Procedure

16. None.

Officer to Contact

Richard Hunt

Head of Catering Hospitality and Country Parks
richard.hunt@leics.gov.uk

List of Appendices

Appendix A - Proposed byelaws
Appendix B - Schedule of Country Parks

APPENDIX A

These Byelaws are made by the Leicestershire County Council under Section 41 of the Countryside Act 1968, with respect to those areas of land listed in Appendix B and any new areas to which the public have access.

Interpretation

1. In these byelaws:

“the Council” means Leicestershire County Council

“the land” means those Country Parks to which the public have access.

“adapted vehicle” means a vehicle, whether mechanically propelled or not

(a) the unladen weight of which does not exceed 150 kilograms,

(b) the width of which does not exceed 0.85 metres, and

(c) which has been constructed or adapted for use for the carriage of a person suffering from a disability and used solely by such a person.

“motorcycle” means

(a) a mechanically propelled vehicle, not being an adapted vehicle, with fewer than four wheels and the weight of which unladen does not exceed 410 kilograms.

(b) an electrically powered motor cycles (excluding an electrically assisted pedal cycle);

“cycle” means a bicycle, a tricycle, or an electrically assisted pedal cycle

“electrically assisted pedal cycle” means a cycle that has pedals that can be used to propel it and an electric motor with a maximum power output of 250 watts that should not be able to propel the cycle at a speed greater than 15.5mph and for which no driving licence is required.

“motor vehicle” means a mechanically propelled vehicle, not being an adapted vehicle or motor cycle, intended or adapted for use on roads;

“trailer” means a vehicle drawn by a motor vehicle, and includes a caravan.

Vehicles

2. (1) No person shall, without reasonable excuse, ride, drive or abandon a motor cycle, motor vehicle or any other mechanically propelled vehicle (other than a cycle, including electrically assisted pedal cycle) on the land, or bring or cause to be brought on to the land a motor cycle, motor vehicle, trailer or any other mechanically propelled vehicle (other than a cycle), except on any part of the land where there is a right of way for that class of vehicle.
- (2) If the Council has set apart a space on the land for use by vehicles of any class, this byelaw shall not prevent the riding or driving of those vehicles in the space so set apart or on a route, indicated by signs placed in conspicuous positions, between it and the entrance to the land.
- (3) This byelaw shall not extend to adapted vehicles
- (4) Motor vehicles shall only be parked or left in designated parking areas.
- (4) This byelaw shall not apply to emergency vehicles accessing the land in connection with the rendering of assistance to patrons.

Cycling

3. No person shall, without reasonable excuse, ride a cycle, except in any part of the land where there is a designated right of way for cycles, or along such routes as may be fixed by the Council and indicated by signs placed in conspicuous positions on the land.

Climbing

4. No person shall, without reasonable excuse, climb any wall or fence on or enclosing the land, or any tree, or any barrier, railing, post or other structure.

Removal of Structures

5. No person shall, without reasonable excuse, remove from or displace on the land any barrier, railing, post or seat, or any part of any structure or ornament, or any implement provided for use in the laying out or maintenance of the land.

Camping

6. No person shall on the land, without the consent of the Council, erect a tent or use any vehicle, including a caravan, or any other structure for the purpose of camping, except on any area which may be set apart and indicated by notice as a place where camping is permitted.

Fires

7. No person shall on the land:

- (1) light a fire, or
- (2) place, throw or drop a lighted match or any other thing likely to cause a fire, or
- (3) release a lighted sky lantern into the atmosphere, or
- (4) light a camping stove or cooker or barbecue, without the consent of the Council.
- (5) launch fireworks or use explosives.

In this byelaw:

“sky lantern” means any unmanned device which relies on an open flame or other heat source to heat air within it with the intention of causing it to lift into the atmosphere.

Trading

8. No person shall on the land, without the consent of the Council, sell, or offer or expose for sale, or let to hire, or offer or expose for letting to hire, any commodity or article.

Protection of Wildlife

9. (1) No person shall without the consent of the Council, intentionally kill, injure, take or disturb any animal, fish or birds (or remove their eggs), or engage in hunting, shooting or fishing, or the setting of traps or nets, or the laying of snares.

(2) This byelaw shall not prohibit any fishing which may be authorised by the Council.

Grazing

10. No person shall, without the consent of the Council, turn out or permit any animal to graze on the land.

Gates

11. Where the Council indicates by a notice conspicuously exhibited on or alongside any gate on the land that leaving that gate open is prohibited, no person having opened that gate, or caused it to be opened, shall leave it open.

Watercourses

12. No person shall knowingly cause or permit the flow of any drain or watercourse on the land to be obstructed or diverted, or open, shut or otherwise work or operate any sluice or similar apparatus on the land. Provided that nothing done by any person acting under statutory powers shall constitute an offence under this Byelaw.

Pollution of Waterways

13. No person shall intentionally, carelessly or negligently foul or pollute any waterway comprised in the land.

Bathing

14. No person shall, without reasonable excuse, bathe or swim in any waterway comprised in the land, except in an area where a notice exhibited by the Council permits bathing and swimming.

Boats

15. No person shall, without the consent of the Council, place on any lake or other waterway comprised in the land, any boat other than a model yacht or toy boat. (including a power- driven model yacht or toy boat) PROVIDED that no person shall operate a power-driven model yacht or toy boat in such a manner as to cause danger to individuals or damage to the flora and fauna of the park, or give reasonable grounds for annoyance to any other person.

Horses (Dangerous Riding)

16. No person shall on the land intentionally or negligently ride a horse in such a manner as to cause danger or annoyance to any other person using the land.

Horses (Only in Designated Areas)

17. Where any part of the land has, by notices placed in conspicuous positions on the land, been set apart by the Council as an area where horse-riding is permitted, no person shall, without the consent of the Council, ride a horse on any other part of the land.

Dogs Prohibited from the Ground(s)

18. (1) No person (other than a registered blind person) in charge of a dog shall, without reasonable excuse, permit the dog to enter or remain in any of the dog prohibited area(s).

(2) An officer of the Council or any constable may require a person in charge of a dog which has entered any of the dog prohibited areas to remove the dog therefrom.

(3) In this Byelaw the dog prohibited area shall mean that part of the land which has by notices placed in conspicuous positions on the land been set apart by the Council as an area for children's play area where dogs are not permitted.

Dogs on Leads

19. (1) No person in charge of a dog shall, without reasonable excuse, permit the dog to enter or remain in any of the dogs on leads area(s) unless the dog is held on a lead and is restrained from behaviour giving reasonable grounds for annoyance.
- (2) In this Byelaw the dogs on leads area shall mean that part of the land which has by notices placed in conspicuous positions on the land, been designated/set apart by the Council as an area where dogs must be on a lead.
- (3) Any person in charge of a dog shall, before departing from the location, remove up any dog mess left by the concerned animal on the Land covered by this byelaw.

Dogs on Leads by Direction

20. (1) Every person in charge of a dog shall, as far as reasonably practicable comply with a direction given by any officer of the Council or constable to keep the dog on a lead and restrained from behaviour likely to cause annoyance or disturbance in each of the grounds.
- (2) A direction under paragraph (1) above may only be given if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any person in any of the grounds or the worrying or disturbance of any animal or bird.

Model cars

21. No person shall operate a power-driven model car in such a manner as to cause danger to individuals or the flora and fauna of the park, or give reasonable grounds for annoyance to any other person.

Model aircraft

22. No person shall, without the consent of the Council, cause any power-driven model aircraft or drone to:
- (a) take off or otherwise be released for flight or control the flight of such an aircraft in the ground; or
- (b) land in the ground without reasonable excuse.

Metal Detectors

23. No person shall use any device designed or adapted for detecting or locating any metal or mineral in the ground without the consent of the Council.

Obstruction

24. No person shall on the land:

(a) intentionally obstruct any officer of the Council in the proper execution of his or her duties;

(b) intentionally obstruct any person carrying out an act which is necessary to the proper execution of any contract with the Council; or

(c) intentionally obstruct any other person in the proper use of the land, or behave so as to give reasonable grounds for annoyance to other persons on the land.

Flyers

25. No person shall without prior written consent of the Council, place or affix any posters, notice, signs, printed matter or advertising on the land covered by this byelaw.

Graffiti

26. No person shall without prior written consent of the Council, shall, paint, tag, spray on or deface any part of the land covered by this byelaw or any structure thereon.

Musical Entertainment

27. No person shall play any musical instrument or sing or give any entertainment on the Land covered by this Bye Law except with the consent of the Council or in pursuance of an agreement with the Council.

Fire-Arms

28. No persons other than police or authorised Council staff shall carry, use or display fire arms or other offensive weapons on the land.

Overnight Parking

29. No person shall, without the consent of the Council, leave any vehicle or cause or permit any vehicle to be left on the land between the hours of 12 midnight and 6 a.m.

Savings

30. (1) An act necessary to the proper execution of his duty on the land by an officer of the Council, or any act which is necessary to the proper execution of any contract with the Council, shall not be an offence under these byelaws.
- (2) Nothing in or done under any of the provisions of these byelaws shall in any respect prejudice or injuriously affect any public right of way through the land, or the rights of any person acting legally by virtue of some estate, right or interest in, over or affecting the land or any part thereof.

Penalty

31. Any person offending against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Revocation

32. The byelaws made by Leicestershire County Council in 2003 are hereby revoked.

SCHEDULE OF COUNTRY PARKS

1. Beacon Hill Country Park, Woodhouse Eaves, Nr. Loughborough
73 ha (180 acres) of undulated heathland, bracken, woods and rhododendron labyrinth. Toposcope on summit affording superb views. Remains of Bronze Age settlement. Native Tree Collection. Café.
2. Burrough Hill Country Park, Burrough on the Hill, Nr. Melton Mowbray
35 ha (86 acres) site of Iron Age Hill Fort. Well preserved ramparts. Toposcope with fine views. Waymarked Trail. Mixed Woodland.
3. Market Bosworth Country Park
35 ha (87 acres) rural Parkland, with arboretum, children's playground and lake.
5. Bosworth Battlefield Visitor Centre and Country Park, Sutton Cheney, Nr. Market Bosworth, Leicestershire
Historic site of Battle of Bosworth 1485 between Richard III and Henry VII. Visitor Centre including interpretation of Battle, exhibitions, film theatre, book and gift shops, Tithe Barn cafe and illustrated Battle Trail. Series of Special Event Days including Battle Re-enactment.
6. Jubilee Wood, Breakback Road, Nr. Loughborough
Mixed woodland with rocky outcrops and walks.
7. Watermead Country Park, Wanlip Road, Nr. Syston, Leicestershire
101 ha (250 acres) Water Park, with lakes, woodland walks, footpaths, picnic area, sail boarding, sailing, fishing and cycleway. Nature reserve with bird hides. Access to River Soar and Grand Union Canal.
8. Broombriggs Farm and Windmill Hill, Woodhouse Eaves, Nr. Loughborough
Typical Charnwood Forest Farm of 53 ha (130 acres) with paths for walkers and riders. Trail with illustrated Boards. Windmill Hill - adjoining woodland area with remains of former Windmill.

9. Sheet Hedges Wood, Newtown Linford Lane, Newton Linford

30 ha (75 acres) mixed wood and farmland with footpaths and trails. Important site for wildlife.

16. Donisthorpe Woodland Park

30 ha (75 acres) of reclaimed colliery site planted with 20 ha of mixed woodland. A 2.5 km surfaced track and grass rides suitable for walkers, cyclists and horse riders and three picnic areas.

17. Salterford Valley and Donisthorpe New Wood including Cockspur Bridge access

7.0 ha of broadleaf woodland, grassland and open water with surfaced paths.

18. Sarah's Wood

10.0 ha of mixed woodland. 1.5 km of tarmac surfaced paths suitable for wheelchair use. Car park and picnic area. The Ashby Canal basin and lock are on the site.

19. Ashby Woulds Heritage Trail

6 km of reclaimed railway line from Measham to Spring Cottage, Ashby Woulds. The surfaced path is suitable for walkers, cyclists and horse riders. The trail provides access to Donisthorpe Woodland Park, Conkers and Moira Furnace.

20. Oakthorpe Colliery

5.0 ha of reclaimed colliery with mature woodland and 1.0 ha of new planting. The site adjoins the Woodland Trust Willesley Wood and has a car park and has a hard surfaced track and picnic benches. The line of the Ashby Canal also crosses the site.

21. Bagworth Heath Wood

75.5 ha of reclaimed colliery with woodland fishing lake and open grass areas. A car park and a children's story telling area have been provided.

23. Lount Nature Reserve

10.0 ha site on reclaimed colliery and tip. Regenerated oak and birch woodland with grass land and natural ponds. Managed as a nature reserve by local volunteers alongside rangers. Car park and access tracks provided.

24. A511 sites Coalville

These sites consist of unimproved grassland, wet areas and ponds. Mixed broadleaved trees have been planted and stone surfaced footpaths constructed.

25. Snibston Colliery Park

Created from a former industrial coal mining site in the National Forest. 45 ha (110 acres) of Leicestershire habitats including a mini arboretum, nature trail and popular coarse fishery. Café alongside Century Theatre, 4km of mountain bike trail. Children's play area and pump track.

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DEVELOPMENT CONTROL AND REGULATORY BOARD

13 OCTOBER 2022

REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE

REVISED MEMBERS' PLANNING CODE OF GOOD PRACTICE

Purpose of the Report

1. The purpose of this report is to present a revised Members' Planning Code of Good Practice (the Planning Code) for consideration prior to it being submitted to the County Council on 7th December 2022 for approval. A copy of the proposed document is appended to this report.

Background

2. In 2010 the Council adopted a Planning Code. It was based on a model originally produced by the Association of Council Secretaries and Solicitors (now the LLG (Lawyers in Local Government)) which was prepared following the introduction of the new ethical framework and consultation with the Local Government Association (LGA), the Local Government Ombudsman, and firms of solicitors and Counsel acting on their behalf.
3. In 2017 the Planning Code was reviewed to take account of changes in legislation and guidance including changes introduced by the Localism Act 2011 relating to declarations of interest and changes in approach to issues such as predetermination. The updated Planning Code was considered by the Corporate Governance Committee and the Development Control and Regulatory Board in February and March 2017 respectively. It was subsequently approved by the County Council on 22 March 2017.
4. At the County Council meeting on 1 December 2021 a revised Members' Code of Conduct was approved. This was based on a new draft model Code of Conduct which had been produced by the LGA following a report by the Committee on Standards in Public Life which made various recommendations to strengthen the code. Minor revisions were made to the LGA Model Code to reflect local issues, creating a locally amended Model Code. The most significant changes to the Code related to declaring interests and the categories of interest were renamed as:
 - Registrable interests:
 - Disclosable Pecuniary Interests;
 - Other registrable interests;

- Non-registrable interests.

Revision of the Members' Planning Code of Good Practice

5. The Members' Planning Code of Good Practice requires updating in line with the Members' Code of Conduct and particularly the changes with regards to registering interests. A proposed new version of the Code is attached as an appendix to this report. Reference to 'personal interests that lead to bias' has been removed and replaced with Registrable interests and Non-Registrable interests. As the paragraph numbering of the Members' Code of Conduct was changed in December 2021, where the Planning Code of Good Practice refers to specific paragraphs of the Members Code of Conduct the numbering has now been updated.
6. The Predetermination in the Planning Process section has also been amended to give greater clarity to the difference between predetermination and predisposition and where the guidance applies to members when they are sitting on the Board as opposed to acting as a member in another capacity.

Corporate Governance Committee

7. The revised Planning Code will be considered by the Corporate Governance Committee at its meeting on 21st November 2022 and will require approval from County Council.

Recommendations

8. The Board is recommended to agree that the County Council be recommended to adopt the revised Planning Code of Good Practice as appended to this report, subject to the Chief Executive being authorised to make any changes including those arising from its consideration by the Board.

Equality and Human Rights Implications

9. There are no equality or human rights implications arising from the recommendations in this report.

Circulation Under the Local Issues Alert Procedure

10. None.

Background Papers

Constitution of Leicestershire County Council - Part 5A, Members' Code of Conduct
<https://politics.leics.gov.uk/documents/s170783/Part5A%20Members%20Code%20of%20Conduct.pdf>

Constitution of Leicestershire County Council – Part 5A1 Members' Planning Code
<https://politics.leics.gov.uk/documents/s166898/Part5A1%20Members%20Planning%20Code.pdf>

Report to the Corporate Governance Committee on 17th February 2017 - 'Revised Members' Planning Code of Good Practice',
<https://politics.leics.gov.uk/documents/s126495/Planning%20Code%20Good%20Practice%20report.pdf>

Report to the Development Control and Regulatory Board on 9th March 2017 - Revised Members' Planning Code of Good Practice',
<https://politics.leics.gov.uk/documents/s127080/Planning%20Code%20Good%20Practice%20report%20DCRBmarch2017.pdf>

Report to County Council on 22 March 2017 - Revised Members' Planning Code of Good Practice',
<https://politics.leics.gov.uk/documents/s127461/REPORT%20OF%20THE%20CORPORATE%20GOVERNANCE%20COMMITTEE%20A.pdf>

Appendix

Draft Revised Members' Planning Code of Good Practice 2022

Officers to Contact

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Part 5A(1)

Members' Planning Code of Good Practice

Part 5A(1) – Members’ Planning Code of Good Practice

Contents

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5	Lobbying
6	Site Visits
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Part 5A (1) - Members' Planning Code of Good Practice

Background

This Planning Code of Good Practice reflects the requirements of the Localism Act 2011 and the County Council's Members' Code of Conduct which is set out in the Constitution.

This Code sets out how councillors can get involved in planning in a fair, impartial, and transparent way.

Definitions of interests referred to below are given in the Members' Code of Conduct, Part 5 of the Constitution.

Introduction

The aim of this Code of Good Practice is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial, or not well founded in any way.

This Code of Good Practice applies to Members at all times when involving themselves in the planning process. This includes both decision-making meetings of the Council when exercising the functions of the Planning Authority (usually at the Development Control and Regulatory Board for development management, referred to here as 'the Board', and at the Cabinet and County Council for development plans) and involvement on less formal occasions, such as at meetings with officers or the public and at consultative meetings. It applies to planning applications, enforcement matters, and policy issues (such as the Minerals and Waste Local Plan).

The key purpose of Planning is to contribute to the achievement of sustainable development, not development at any cost. Planning should ensure that the right development happens in the right place at the right time, benefitting communities and the economy. It plays a critical role in identifying what development is needed and where, what areas need to be protected or enhanced, and in assessing whether proposed development is suitable. It does this by regulating the development and use of land in the public interest.

Your role as a Member of a Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early from the Director of Law and Governance as the County Council's Monitoring Officer or one of their staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first. This must always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of your involvement in planning matters. If you do not abide by this Code of Good Practice, you may put:
 - the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of being in breach of the Members' Code of Conduct and, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.

2. Development Proposals and Interests under the Members' Code of Conduct

- **Do** disclose the existence and nature of your interest at any relevant juncture, including informal meetings or discussions with officers and other Members.
- **Do** disclose your interest at the beginning of the meeting, or as soon as it becomes apparent. It is good practice to declare your interest again at the start of the relevant item, particularly because members of the public may only be attending for that issue and will not have heard the declaration at the beginning.
- **Do** consider the type of interest you may have and act accordingly.

A. Registerable Interests (those you have included in your register of interests in accordance with the Code of Conduct)

If the matter *directly relates* to one of your Registerable Interests you should declare the existence and the nature of the interest before the item is considered, and

- **don't** get involved in the processing of the application;
- **don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority;
- **don't** try to represent local views, get another Member to do so instead;

- **do** withdraw from any meeting prior to consideration of the matter.

If the matter does not *directly relate* to one of your Registerable Interests, then

- **do** consider whether the matter may nonetheless affect your financial interest or wellbeing or that of a friend/relative/close associate;
- **do** carefully consider the extent to which you or your friend/relative/close associate, is affected and whether it might lead to, or could be perceived to lead to, bias on your part;
- **do** be aware that you may attend a Board meeting to make representations, answer questions, or give evidence on the matter provided that public speaking rights also apply;
- **do** ensure that if you decided to make representations on this basis you do not then take part in any discussion or voting on the matter and withdraw from the meeting after you have spoken.

B. Non-Registerable Interests (those not in your register of interests but that may arise with a particular matter)

If the matter directly relates to or affects a financial interest or the wellbeing of yourself or of a friend/relative/close associate (and is not a Registerable Interest) then

- **do** carefully consider the extent to which you or your friend/relative/close associate, is affected and whether it might lead to, or could be perceived to lead to, bias on your part;
- **do** be aware that you may attend a Board meeting to make representations, answer questions, or give evidence on the matter provided that public speaking rights also apply.
- **Do** ask yourself when considering the nature of your interest, whether Registerable or Non-Registerable -

“Is the financial interest or wellbeing of myself or my friend relative/close associate affect to a greater extent than the financial interest or wellbeing of the majority of inhabitants of the ward affected by the decision?”

“Would a reasonable member of the public knowing all the facts believe that this would affect my view of the wider public interest?”

If your answer to either of these questions is “yes” then you must disclose the interest, not take part in discussion or voting on the matter, and leave the meeting during its consideration. As explained above, you may still make representations at the Board meeting provided that public speaking rights apply.

- **Don't** in any event ever seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your role as a Member. This would include discussing the matter with officers or Members when the public would not have the same opportunity to do so.
- **Do** be aware that whilst you are not prevented from seeking to explain and justify a proposal in which you have an interest to an appropriate officer, you must always declare your interest and the Code places greater limitations on you in representing that proposal than would apply to a member of the public.

3. Predetermination in the Planning Process

Predetermination is also referred to as ‘fettering discretion’. It is not the same as *predisposition*, as explained below.

Predetermination occurs when you are deemed to have made your mind up and will not consider any subsequent information presented. However, you can be *predisposed*, that is, have an initial view on the matter.

As an elected Member you are entitled, and are often expected, to have expressed views on planning issues (*predisposition*). Some Councillors may be elected in part because of their views on such matters. However, if you become involved in the decision making as a member of the Development Control and Regulatory Board then you must be clear that you are prepared to reconsider your position in the light of all the evidence and arguments.

As an elected Member involved in a planning matter:-

- **Don't** predetermine (fetter your discretion) by approaching the decision with a closed mind.
- **Do** keep at the front of your mind that, particularly if you are predisposed as to how you might decide a particular application, you
 - must keep an open mind at the meeting;
 - must make it clear that you are still willing to listen to all of the evidence and material considerations presented, both the officers' presentation of the facts and their advice, as well as the arguments from all sides, before deciding how to exercise your vote;

- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
- are only entitled to take account material considerations and must disregard considerations that are irrelevant to the question and legal context at hand; and
- are to come to a decision after giving what you feel is the right weight to those material considerations.

If you have predetermined the application:

- **Don't** participate in the determination of the matter at the Board because if you did take part in the discussion or vote it would put the County Council at risk, because

Firstly, it would probably constitute maladministration in the opinion of the Local Government Ombudsman.

Secondly, the Council could be at risk of a legal challenge, including Judicial Review, on a number of possible grounds:

- that there was a danger of bias on your part; or
 - you had predetermined the issue; or
 - there was a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- **Don't** speak or vote on the proposal.
 - **Do** consider whether you should also withdraw from the meeting during the Board's consideration of that application. Although you are not required to, you may prefer to leave to avoid any complaint that your presence may have influenced the decision.
 - **Do**, if you decide to stay in the meeting, explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having predetermined the matter, so that this may be recorded in the minutes.

If you have not predetermined a matter but are predisposed as to how you might decide an application,

- **Do** consider yourself able, for example, to:
 - make public statements on an issue, and
 - campaign on a particular issue;

provided you make it clear when you do this that you do not have a closed mind and are amenable to changing your mind in the light of all the information, advice and evidence which will be presented to you at the time of making a decision.

County Council Proposals

- **Do** be aware that if you have been involved in the preparation, submission or advocacy of a planning proposal on behalf of the County Council (i.e. where it is the landowner, developer or applicant) you should avoid participating in the decision-making process as you could be considered to be biased or have predetermined the matter.

Local Members whose electoral division is directly affected by the application

- **Do** consider whether you should take the opportunity to exercise your separate speaking rights as a Local Member (subject to the consent of the Chairman of the Board under Meeting Procedure Rule 33(2)) where you have represented your views or those of local electors to such an extent that you have, or are likely to be seen as having, predetermined the application. Where you do:

- advise the proper officer and the Chairman that you wish to speak in this capacity before commencement of the meeting;
- after you have spoken, remove yourself from the member seating area for the duration of that item, or you may prefer to leave the room entirely as suggested above so as to avoid any complaint that your presence may have influenced the decision; and
- ensure that your actions are recorded.

Members of another body involved in an application

- **Do** be aware that, although the provisions in the Members' Code of Conduct are applied in such a manner as to recognise that the Code should not obstruct a member's service on:
 - another local or public authority; or
 - a body to which you have been appointed or nominated by the Council as its representative;

you must decide in relation to any planning proposal, whether you have been involved to such an extent in the preparation, submission or advocacy of a planning proposal on behalf of such a body as to make your participation in the decision-making process inappropriate. If you have then you should always disclose this Other Registerable Interest and withdraw from the meeting.

Participation in the discussions of consultee bodies by Members of the decision-making body

- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (i.e. where you are also a member of the district council as well as being a County Member), provided that:
 - the proposal does not substantially affect the wellbeing or financial standing of the consultee body;
 - you make it clear during the discussion at the consultee body that:
 - (i) you will reserve judgement and the independence to make up your own mind on each separate proposal when it comes before the decision-making body (e.g. the Board) and you hear all of the relevant information;
 - (ii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Board for consideration; and
 - (iii) you disclose the personal interest regarding your membership of the consultee body or role when the Board comes to consider the proposal.

4. Contact with Applicants, Developers and Members of the Public

- **Do** exercise caution if approached about a planning application by an applicant, developer or member of the public and refer them to Council Officers for planning, procedural or technical advice.
- **Don't** agree to any meeting with applicants, developers or groups of objectors/supporters where it can be avoided. Where you feel that a formal meeting would be useful in clarifying the issues, it is advisable that you do not seek to arrange that meeting yourself as this may be seen as your promoting one point of view or the other. Instead, you may request the Chief Executive (Head of Planning) to organise it. Officers will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any particular course of action, that the meeting is properly recorded on the application file, and that the record of the meeting is disclosed when the application is considered by the Board.
- **Do** make it clear that you will only be in a position to make a final decision on the application after having heard all the relevant evidence and arguments at the Board.
- **Do** remember to:
 - follow the rules on lobbying (below);

- consider whether it would be prudent in the circumstances to make notes when contacted and whenever an officer is not present; and
- report to the Chief Executive (Head of Planning) any significant contact with the applicant or other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

Presentations by Applicants/Developers

- **Do** feel able to attend public exhibitions or information events held by applicants/developers, but remember -
 - to ask questions only for the purposes of clarifying your understanding of the proposals;
 - that the presentation is not part of the formal process of debate and determination of any subsequent planning application; this will be carried out by the Board;
 - that a presentation can be a form of lobbying and you must not state how you or other members might vote.
- **Don't** attend private presentations from applicants/developers without requesting an officer to be present.

5. Lobbying

Special attention is needed with regard to lobbying in the planning decision-making process. Lobbying in respect of other aspects of members' work is commonplace and it is an accepted part of the democratic process. However, if such lobbying of members of the Development Control and Regulatory Board oversteps the mark (see examples below) it can lead to the impartiality and integrity of members being called into question and decisions taken being referred to the Local Government Ombudsman and/or being subject to legal challenge.

This can be especially difficult for the Local Member who is also a member of the Board. Therefore, care is required when lobbying of and by a member occurs during consideration of a planning application.

A. Lobbying of Members

- **Do** remember that your overriding duty is to the whole community in Leicestershire, not just the people in your electoral division. You need to make decisions impartially and ensure that you do not favour, or appear to favour, any person, company, group or locality.
- **Don't** declare the way you intend to vote.

- **Do** feel able to express an opinion on the merits prior to your formal consideration of the matter at the Board *but only* if you are very clear that you will only make your mind up at the meeting after hearing the officers' presentation and evidence and arguments on both sides.
- **Do** explain to those attempting to lobby you that, whilst you can listen to what is said, you may be open to accusations of predetermination if you express a firm point of view or an intention to vote one way or another, and you would not then be able to participate in the Board's decision-making.
- **Do** pass on any representations you receive and copy or pass on any lobbying correspondence you receive to the Chief Executive (Head of Planning) at the earliest opportunity.
- **Do** refer any offers made to you of planning gain or to restrict the development through a proposed Section 106 planning obligation or otherwise to the Chief Executive (Head of Planning).
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum and its acceptance is registered in accordance with the Members' Code of Conduct.
- **Do** indicate that you will pass on that person's views to the Chief Executive and, if necessary, to the Board when it considers the matter, but that you cannot commit yourself to vote in any particular way. If you intend to speak at the Board in this way make it clear at the start of the meeting that this is what you are doing so that this can be recorded.
- **Do** remember that, subject to the advice on interests in Part 2 above you may:
 - Listen/receive viewpoints from residents or other interested parties;
 - Make comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to predetermining the issue and you make it clear that you are keeping an open mind;
 - Seek information through appropriate channels; or
 - Be a vehicle for the expression of opinion or speak at the meeting as a Local Member, provided that, if you are also a member of the Board, you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or local view, you will make up your own mind having heard all the facts and listened to the debate.

B. Lobbying by Members

- **Don't** lobby fellow members excessively regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of a meeting of the Board. In this context:

Lobbying is asking fellow members to hear or share one's thoughts and concerns on an issue.

Excessive lobbying is applying such pressure on a fellow member that it amounts to an attempt to obtain a commitment as to how they will vote, whether spoken or unspoken. Pressure of this sort is an attempt to predetermine the outcome of the issue (making the decision potentially unlawful) and may also amount to the Member using their position improperly to confer an advantage or disadvantage (breaching paragraph 2.19 of the Members' Code of Conduct).

If you approach a fellow Member regarding a planning application (or indeed any other issue):

- **Do** be mindful that they may feel under undue pressure more readily in the following situations:
 - a senior member lobbying a less senior colleague;
 - a number of members lobbying an individual;
 - persistent lobbying of a member.
- **Do** always be clear that your lobbying is to solicit interest only and you are not seeking a voting commitment.
- **Do** cease to lobby a member if it appears there is a risk that they will feel subject to pressure as to how he/she votes.
- **Don't** discuss how to vote on a planning proposal at a political group meeting or lobby other members to do so. The Local Government Ombudsman has made it clear that the use of political whips to determine planning applications could amount to maladministration.

Membership of Lobby Groups

- **Don't** lead or act as spokesperson of an organisation or group whose *primary purpose* is to lobby or promote or oppose a planning application.
- **Do** feel able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning applications, e.g. The Victorian Society, The Ramblers, CPRE, or a local civic society. However, if you are a member of such an organisation and this is relevant to a particular application, you should make sure that you declare that interest and consider whether it might lead to, or could be perceived to lead to bias on your part.

Undue or Excessive Lobbying

- **Do** inform the Director of Law and Governance if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality). The Director will ensure that the

appropriate action is taken.

6. Site Visits

- **Do** attend site visits organised by the County Council.
- **Do** ensure that any information which you gained from the site visit is reported back to the Board, so that all members and officers involved in the decision-making have the same information.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on factual matters which are relevant to the site inspection.
- **Do** have regard to the Council's Site Visit Protocol, in particular noting that all discussion during visits should be conducted through the Chairman and limited to the drawing of attention to facts/features associated with the site.
- **Don't** get involved in discussion with the applicant/developer or any members of the public who may be present during the visit. If you are approached advise them that representations should be made in writing, and direct them to or inform the County Council officer accompanying you.
- **Don't** express firm opinions or views or declare the way you intend to vote.
- **Don't** enter a site which is subject to a planning proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - you feel it is essential for you to visit the site other than through attending the official site visit;
 - you have first spoken to the Chief Executive (Head of Planning) about your intention to do so and why (which will be recorded on the planning file); and
 - you can ensure you will comply with these good practice rules on site visits.

7. Pre-Meetings

Briefing meetings for the Chairman and Spokesmen of the Board are held to facilitate the smooth running of the Board meetings. Discussion will be limited to procedural issues such as the organisation of site visits, arrangements for members of the public to exercise their speaking rights at the meeting, and to ensure that all the relevant paperwork and information is available for the meeting.

- **Do** use pre-meetings to resolve procedural issues to facilitate the smooth running of the formal meeting.
- **Don't** discuss the determination of applications at either Board briefing meetings or political group meetings.
- **Don't ever** use the political whip on a planning matter. This would leave the decision open to challenge and could give rise to a finding of maladministration by the Local Government Ombudsman.

8. Public Speaking at Meetings

The County Council has a procedure to allow members of the public to make representations at meetings of the Development Control and Regulatory Board. As an elected Member -

- **Do**, if contacted by the public before the meeting, explain that whilst you may express a view you must be seen to be keeping an open mind on the matter, and that you will determine the application on its merits, having regard to material considerations.
- **Don't** allow applicants or members of the public to communicate with you at all during the Board's proceedings as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

9. County Council Officers

- **Don't** put pressure on officers to put forward a particular recommendation as this may be seen as prejudicing their professional integrity and impartiality. This does not prevent you from asking questions or submitting views to the Chief Executive (Head of Planning) which may be incorporated into any Board report.
- **Do** recognise that officers are part of a management structure and you should only discuss a development proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with any appropriate officer and professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions, or decisions of elected Members.

10. Decision Making

- **Do** come to Board meetings with an open mind and demonstrate that you are open-minded.
- **Do** make decisions in accordance with the relevant Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, the Board may defer or refuse the application.
- **Don't** vote or take part in the decision on a proposal unless you have been present to hear everything that has been said at that meeting, including the officers' introduction to the matter.
- **Do** make sure that if you are proposing, seconding, or supporting a decision that you clearly identify and understand the planning reasons leading to this conclusion/decision. Where a decision is being taken contrary to officer recommendations, reasons for this must be given prior to the vote and these must be recorded. Be aware that the Council may have to justify the resulting decision by giving evidence in the event of any legal challenge.

11. Member Awareness

The planning system involves complex legal and technical issues which require the application of sound judgement in the assessment of planning proposals. A failure to follow proper practice and procedures can lead to serious consequences for the County Council as the Planning Authority.

The County Council has determined that all elected Members must attend a planning training session prior to being involved in the determination of planning decisions. You are strongly encouraged to participate in any further training on planning matters and this Code of Good Practice to assist you in carrying out your role properly and effectively.

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