



LEICESTERSHIRE
COUNTY COUNCIL

DEVELOPMENT CONTROL AND REGULATORY BOARD

18TH OCTOBER 2001

**REPORT OF THE ACTING DIRECTOR OF PLANNING AND
TRANSPORTATION**

COUNTY MATTER

**VIRIDOR WASTE MANAGEMENT LIMITED (FORMERLY TERRY ADAMS LTD) –
PROPOSED PROGRESSIVE RECLAMATION OF DERELICT COLLIERY SITE TO
PUBLIC AMENITY WOODLANDS AND GRASSLANDS FOLLOWING
RESTORATION OF COLLIERY SPOIL MOUNDS AND DISPOSAL OF
CONTROLLED WASTES WITH CONSTRUCTION OF SITE SUPPORT FACILITIES
INCLUDING ELECTRICITY GENERATING PLANT FUELLED BY LANDFILL GAS
AND COMPOSTING AREA FOR “GREEN” WASTES AT THE FORMER
NAILSTONE COLLIERY, WOOD ROAD, ELLISTOWN (HINCKLEY AND
BOSWORTH)**

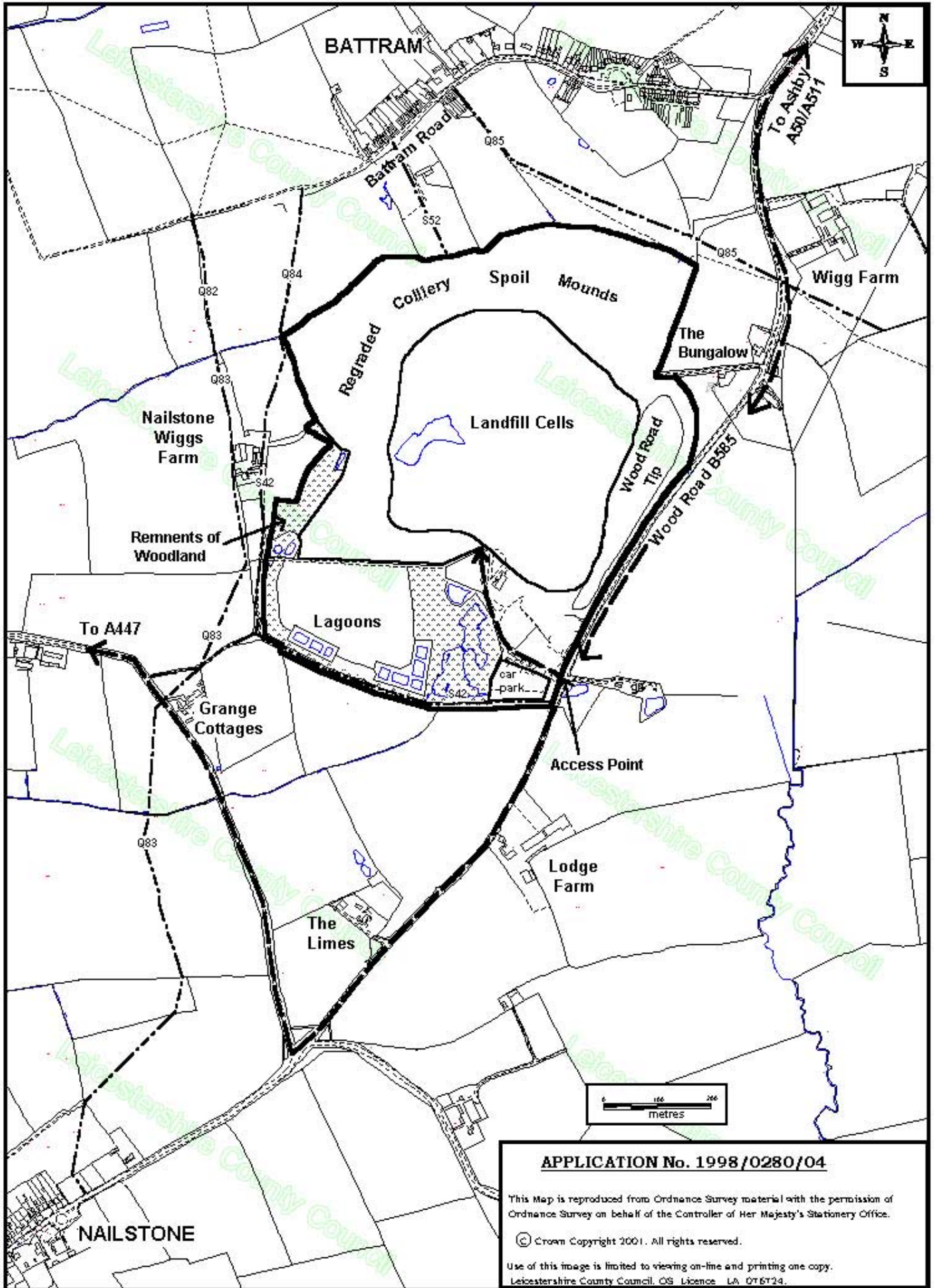
98/0280/4 – 17TH APRIL 1998; 9TH JULY 2001

Background

1. Nailstone Colliery was established in 1895 and closed in 1991. Mining ceased at the colliery in 1968. The colliery was connected underground to Bagworth colliery and between 1968 and 1991 it was operated by British Coal for coal preparation, storage and disposal of spoil from Bagworth colliery. Between 1990 and 1992 British Coal and HJ Banks & Co. had a tip washing coal recovery scheme at the site. This involved regrading the northern colliery spoil heap. Several slurry lagoons were needed for these operations and were incorporated within the present northern and western perimeter spoil mounds. The final profile for the mounds and the capped lagoons were approved by the County Council in October 1996 as part of the restoration scheme for approximately two thirds of the current application site. Nailstone Colliery was one of ten sites that were purchased by Terry Adams Limited in December 1996 from British Coal. Terry Adams were taken over in October 1999 by Viridor Waste Management who are now the current owners and applicants for the site.

Location of Proposed Development

2. Nailstone Colliery is located 13 km to the north west of Leicester and 3 km south of Coalville situated within Hinckley and Bosworth Borough area, although the northern boundary is near to the boundary with North West Leicestershire.

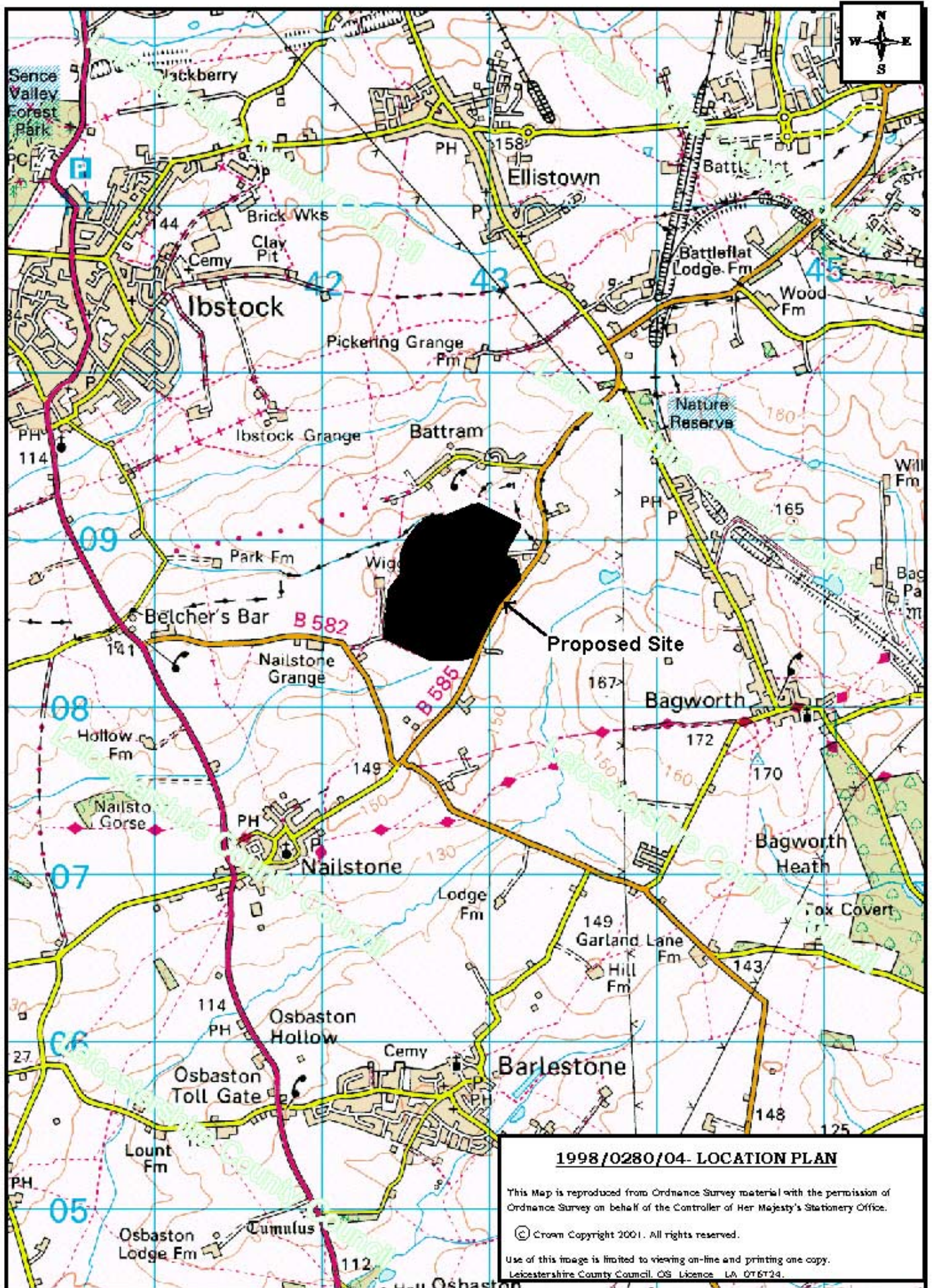


APPLICATION No. 1998/0280/04

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It is located within the parish of Nailstone. The hamlet of Battram is located the north of the site, the nearest part of Battram being some 200m from the site boundary. The village of Nailstone is located to the south of the site, the nearest part being some 1100m from the site boundary. Most of the land which adjoins the site is owned by the company. The immediate surrounds of the Nailstone Colliery site consist of gently undulating agricultural land within which there is one significant group of houses (Battram) and a number of other residential properties. To the east, beyond Wood Road (B585), there is a belt of agricultural land with no dwellings within it which extends to the village of Bagworth approximately 1 km away. On the western edge of Bagworth is the site of the now reclaimed Bagworth Colliery tip which forms a shallow dome within the landscape.

3. At the north eastern end of Wood Road Tip, Wood Road diverges from the site boundary and there is a strip of agricultural land between the two about 150 metres wide. Just to the north of the point of divergence there is a small group of houses alongside Wood Road which comprises a terrace of houses and a former public house on the east side of the road and a bungalow on the west side. Wiggs Farm is to the east of Wood Road some 250 metres from the north eastern site boundary.
4. Wood Road continues north eastwards as part of a signposted lorry route to the A511 approximately 4.3 km away.
5. To the north of the site is a belt of agricultural land between 200 and 300 metres wide which separates the site from Battram. This is a loose linear grouping of approximately 80 houses along Battram Road, a cul-de-sac running westwards from Wood Road. To the north and north west of Battram is a belt of agricultural land extending to the settlements of Ellistown and Ibstock between 1 and 1.5 km away.
6. Immediately to the west of the woodland along the western boundary of the site there is agricultural land and Nailstone Wiggs Farm which is approximately 100 metres from the site boundary. The farm access road joins Grange Lane some 400 metres to the south west where there is a terrace of four houses alongside the road (Grange Cottages) which are some 200 metres from the site boundary.
7. South westwards from the colliery site Wood Road runs through an area of agricultural land towards Nailstone village about 1 km away. There are two houses alongside this section of Wood Road. Lodge Farm is about 250 metres from the site and The Limes about 400 metres away and set back from Wood Road within a small enclosure which is surrounded by mature trees.

Description of Development

8. Nailstone Colliery extends to some 54 ha. It comprises of a number elements:
 - a. the north western, northern and north eastern flanks of the site are made up of dark grey colliery spoil mounds formed almost entirely of capped slurry lagoons which reach a height of between 10 and 20 metres above the surrounding agricultural land and are almost devoid of vegetation;
 - b. the eastern edge is made up of the original colliery tip which is steep sided but well wooded on its outer flanks;
 - c. the central area of the site is made up of previously used car parks, bare spoil, concrete hardstandings, demolition rubble and former coal stocking areas, and is formed in a "bowl" type shape in-between the spoil mounds that flank it;
 - d. the western and southern edges comprise of remnants of ancient and regenerated woodland, and two lakes in former brick clay pits;
 - e. the south western part of the site is made up of previous coal stocking areas and has 8 settlement ponds near the southern boundary.
9. It is proposed that the "bowl" within the site is infilled with 2.28 million m³ of waste over a nine year period at an average rate of about 250,000 m³ per annum to an average depth of 16 metres. The types of wastes proposed are to wide ranging non-inert wastes which would include commercial, industrial, household, construction and demolition wastes, although it is not proposed to accept toxic, BSE, special or hazardous wastes. The spoil mounds surrounding the "bowl" area on its northern, eastern and western (in part) flanks are proposed to be restored by placing soil materials on the spoil banks. These restoration materials are proposed to be won by winning suitable materials from the drift and clay deposits within the proposed landfill.
10. The proposed waste disposal facility is designed upon the principle of containment. In order to prevent pollution of the surrounding environment the base, sides and top of the landfill would be sealed to stop the escape of gasses given off and the liquid leachate formed by the wastes. The gasses and leachate are proposed to be collected with the gasses used for generation electricity and the excess leachate liquor removed from the site for treatment and disposal at a sewage works.
11. It is proposed that the landfill operations would be carried out in a series of five phases based on cells which would be constructed progressively over the life of the site. The cells would be constructed in the mudstones underlying the base of the site. These mudstones are around 70 metres thick below the site and are of low permeability. As well as clay lining the base of the site is proposed to be lined with a composite or dual lining system. This would consist of a 2mm thick geomembrane liner lain over a 1 metre thick layer of clay compacted to a

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permeability of 1×10^{-9} . The membrane would be covered by a suitable protector – a 300mm thick layer of granular material and a pipe system to aid leachate flow. The details of which would be matters for a waste management licence. The side walls will be lined with a compacted 1 meter thick clay. Following completion of each phase of the landfill it would be capped with a 1 metre thick layer of clay before soil making material is placed on top.

12. The cells would be filled from north to south and all waste would be deposited alongside the wall face and compacted into layers between 0.5 and 1 metre. At the end of each day the layers would be covered over with suitable material.

NAILSTONE PROPOSED LANDFILLING TIMESCALES		
Phase	Activities	Years
Initial development works & Phase 1	<ul style="list-style-type: none"> • Site access • Drainage • Excavation of restoration materials • Soil spreading on outer flanks • Regarding Wood Rd mound • Wheelwash, weighbridge etc • Construct cell 1 • Southern boundary treatment and mound • Woodland planting south of site • Rights of way through existing woodlands • Breaking up hardstanding areas 	1.5
Phase 1	<ul style="list-style-type: none"> • Cell 1 commence infilling • Gas & leachate controls installed • Excavate restoration materials from cell 2 • Soil and grass perimeter mounds • Planting on Wood Rd mound • Construct electricity generating compound • Cap & soil completed part of cell 1 • Install footpaths on northern & eastern areas 	
Phase 2	<ul style="list-style-type: none"> • Cell 1 complete infilling • Cell 2 commence infilling • Excavate restoration materials from cell 3 • Construct bund on southern boundary • Spread soils on western spoil bank & southern mound • Tree/shrub planting on Phase 1 • Gas & leachate controls extended • Cap & soil completed part of cell 2 • New footpaths on restored areas 	2.0
Phase 3	<ul style="list-style-type: none"> • Cell 2 complete infilling • Cell 3 commence infilling • Excavate restoration materials from cell 4 • Stockpile clay behind southern bund • Tree/shrub planting on Phase 2 • Gas & leachate controls extended • Cap & soil completed part of cell 3 • New footpaths on restored areas 	2.0

NAILSTONE PROPOSED LANDFILLING TIMESCALES		
Phase	Activities	Years
Phase 4	<ul style="list-style-type: none"> • Cell 3 complete infilling • Cell 4 commence infilling • Excavate restoration materials from cell 5 • Stockpile clay in southern area • Tree/shrub planting on Phase 3 • Gas & leachate controls extended • Cap & soil completed part of cell 4 • Site workshop relocated 	2.0
Phase 5	<ul style="list-style-type: none"> • Cell 4 complete infilling • Cell 5 commence infilling • Tree/shrub planting on Phase 4 • Gas & leachate controls extended • Complete, cap & soil cell 5 • New footpaths on restored areas 	2.0
Final Restoration	<ul style="list-style-type: none"> • Tree/shrub planting on Phase 5 • Site support facilities removed • Car park facilities finalized 	1.0
Aftercare	<ul style="list-style-type: none"> • Programme of aftercare works 	10.0

13. The application suggests that a composting area could be made available during the life of the landfill operations in the southern part of the site but that this would be the subject of a further application if it proved necessary to establish such a facility.
14. Restoration of the site is proposed to be progressive to nature conservation and recreation uses which will consist of woodland, heath/acid grass land, reedbeds, open water, footpaths and car parking facilities as follows:

Restoration uses	Area
Amenity grassland with disabled access to picnic areas	10.0 ha
Wildflower-rich grassy glades with substantial woodland areas	1.5 ha
Fishing lakes	1.0 ha
Native broadleaf woodland	28.0 ha
Heath / acid grassland	8.5 ha
Reed beds	2.5 ha
Water bodies	0.5 ha
Footpaths (incl bridleways, mountain bike track, informal paths)	6 kms
Surfaced car park for 25 cars	

15. The proposed aftercare is for 10 years following the completion of restoration in a given phase.
16. A number of footpaths and bridleways run adjacent to the site and in close proximity it.

17. Access to the site is proposed to be off Wood Lane at the existing access point to the former colliery site. It is anticipated that the site would generate 82 HGV trips (164 movements) plus 43 car/light commercial vehicle trips (86 movement). In the order of 90% of HGV traffic is expected to approach the site from the north along the A511 and B585, whilst the remaining 10% is expected to approach the site from the south, along the A447, B582 and B585. A Traffic Impact Assessment (TIA) has been submitted which suggest improvements to the visibility to the Wood Land staggered junction and possible improvements to the ghost island at the site access. The applicants are prepared to implement these improvements should the County Council be minded to approve the proposal.
18. The proposed development is likely to give rise to 18 long-term full time jobs.
19. The planning application is accompanied by an Environmental Assessment in the form of an **Environmental Statement** (ES) and covers the following matters:

Need

20. Since the application was first submitted the applicants have submitted further justification for their proposal in terms of need, both from a quantitative point of view i.e. the need to provide a waste facility in this location and the need to restore the site to a beneficial afteruse. Based on information from the Waste Local Plan Inquiry and the Inspector's Report the applicants set out the case for an additional waste disposal facility. They suggest that the two sites in the Plan (New Albion Revised and Newhurst) will not provide sufficient capacity to meet the needs of disposing of Leicestershire's waste. The applicants set out a detailed analysis of the arisings and capacities of sites in Leicestershire and concludes that Nailstone is required to meet the shortfall. This is based primarily on the assumption that 60% of New Albion's capacity will be utilized by waste arising from outside the County, by Nailstone being in greater proximity to where Leicestershire's waste arises and the underestimate that the Local Plan has made in providing for industrial and commercial waste given the figures now published in the Environment Agency's Strategic Waste Management Assessment (2000). Of equal importance, they argue that there is an urgent need to restore the site given the acidic nature of the colliery spoil mounds which is currently causing potential water pollution and the need to provide for a long term solution to the whole site in line with planning policies.

Landscape

21. The ES recognizes that the site is a discordant element in the landscape and is clearly visible from viewpoints around the site. The proposal aims to mitigate the effects through restoration of the site and its outer flanks by providing a landscaped restoration. During the first three years there will be earth moving and operation activities visible on the site but these will lessen as the operations continue throughout its life. The height of the landfill will initially be higher than the final finished levels to allow for settlement. Some 80% of the settlement is anticipated to be complete within the first 5 years.

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22. A visual and landscape assessment has been made of the site and its operations relating to both pre and post settlements levels of the proposed landfill. A visual assessment has been made from 9 viewpoints around the site with the following conclusions:
- a. footpath S42 – views unchanged;
 - b. Grange Lane - the northwest flanks of the landfill would appear about 4m higher during Phase 1 operations at a distance of over 1400m;
 - c. Nailstone Wiggs Farm - the view from the first floor of the Farm would be unchanged during Phase 1. By Phase 4 the northwest flanks would appear some 2 m higher at a distance of 360m;
 - d. Wiggs Farm - the north eastern flank of the landform would appear about 4m higher during Phase 1 operations, at a distance of some 545m;
 - e. The Bungalow - the view from The Bungalow would be unchanged at the end of Phase 1, but the northeastern flank of the landform would appear less than 2 m higher by the end of Phase 3, at a distance of 338 m;
 - f. Battram Road - the northern flank of the landform would appear to be less than 2m higher at the end of Phase 1, at a distance of over 440m;
 - g. Wood Road - the view would be unchanged between the pre and post-settlement periods. The restoration materials storage mounds would not be visible;
 - h. Battram Village Hall - the northern flanks of the land form would appear 3m higher the end of Phase 1, at a distance of over 520m;
 - i. Proposed housing, Bagworth – the north eastern flank of the land form would be visible from Bagworth at a distance of around 1400m. The difference between the pre and post settlement levels would be around 5m
23. The assessment concludes that the development would not create any adverse effects upon the character or the quality of the landscapes. Early restoration works would significantly reduce the landscape and visual impacts of the existing spoil banks in line with the objectives of the National Forest.

Amenity Impacts

24. The ES considers noise, dust, smells, litter, birds and pests or vermin and the impact on health.
25. Noise – Noise surveys have been carried out and predictions to assess the likely impacts of the proposed development on noise sensitive properties in the area. Noise surveys have been carried out on three occasions between January 1998 and September 2000. Comparing predicted noise to the average (over the 3 years) background noise levels the application sets out the following levels:

Location	L_{A90} (Background levels – average)	Average LA90 + 10dB Value	Predicted worse case dB_{Laeq} (1 hour) (Normal operations)	Comparative values dB(A)
Battram Road	37.7	47.7	44.0	-3.3
The Bungalow	37.2	47.2	49.0	+1.8
Lodge Farm	39.3	49.3	48.0	-1.3
Grange Cottages	39.2	49.2	49.0	-0.2
Nailstone Wiggs Farm	34.0	44.0	51.0	+7.0

26. According to Government guidance, the applicants suggest that a level to work to would be 10dB(A) above background (as set out in column 3 above). On this basis, the applicants state that only the Wiggs Farm appears to expect noise levels higher than Government guidance would suggest. The remaining prediction they propose would have marginal effects. To mitigate the excess they offer a noise control scheme to be agreed before operations commence.
27. Dust – The applicants state that the main sources of dust are likely to be: traffic along site access roads, earth moving operations, deposition, spreading and compaction of waste materials at the operational face of the landfill. The proposals to mitigate dust emissions include hard surfacing the access road into the landfill (about 400m), keeping these roads clean, installation of wheel wash facilities, water bowing regime and suspension of operations during particularly dry conditions.
28. The applicants have also considered the issue of air quality and PM_{10s} and are prepared to undertake air quality monitoring to assess the current levels of PM₁₀ and carry out appropriate control measures as a consequence.
29. Smells – Smells originate from a landfill from the constituents of land fill gas and from biodegradable material. It is proposed that gas will be vented off initially but later collected for energy generation. Good site practice to cover the waste as soon as is practicable should reduce the incidence of unpleasant odour control. Detailed odour control would form part of the application for a waste management license.
30. Litter – the range of waste proposed to be landfilled will include light and readily wind blown material. Litter control will take the form of lorries being sheeted, light loads to be deposited at the base of the landfill and compacted, covering during the day, the use of bund and mobile litter screens, active management and litter collection, temporary cessation of operation in excessive wind conditions.
31. Bird Control – waste can attract gulls and the proposed controls would include covering the waste material as soon as practicable, the use of audible distress calls to frighten bird off, use of high visibility materials, flying kites, pursuit of resting gulls / birds.

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32. Pests or vermin would be controlled by active management and baiting to control the presence of pests and vermin.

Landfill Gas and Leachate

33. The containment of the site and the construction of landfill gas collection and control systems will ensure that the impacts of landfill gas will be minimized. It is proposed to collect gas to produce electricity. A typical 1 MW electricity generating unit will cover an area of 25m² and be of a height not exceeding 3m. It is estimated that the site could generate 4 MW of power.
34. Leachate will be collected from the contained site through a series of pipe work installed during the construction of the landfill cells. The leachate will be recirculated with the landfill with excess liquor being tinned off site for treatment.

Site Stability

35. The applicants commissioned mining consultants to consider the stability and load bearing capacity of slurry lagoons at Nailstone. Subject to certain measures that the consultants recommend the general conclusion that there is sensibly no potential for the failure of the slopes under the surcharge proposed in the application. The applicants confirm that it would carry out the development in accordance with the consultants recommendations and would accept a planning condition or waste management/IPPC condition to that effect.

Nature Conservation

36. An ecological survey of the site has been carried out covering vegetation types, plant species and birds and separate surveys on badgers, bats and amphibians have also been undertaken. The ES concludes that the site is virtually devoid of vegetation and extremely limited in nature conservation interests. The woodland perimeters of the site would not be affected by the proposals and their habitats are proposed to be enhanced.
37. The only significant habitat to be adversely affected is that of the Little Ringed Plovers. Legislation protects this species from disturbance during their nesting season and it is proposed to provide replacement habitat within areas which are progressively restored.
38. No evidence of badgers was found within the site but badgers are thought to be present in the surrounding area. Indications are that the proposal would not have an adverse impact on badgers.
39. No bat roosts were found but all trees on the site could not be fully checked. However bats did feed in the wooded areas and a total of three bat species were recorded. It is concluded that none of the areas over which bats were recorded would be directly affected by the proposal. In the medium to long term there would be a beneficial impact on bats since the proposed restoration would provide feeding habitats.

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40. The amphibian survey found great crested newts in only one water body. A single smooth newt was observed as well as common toads and frogs. Amphibian habitats lie outside the foot print of the landfill and will not be affected directly or indirectly by the proposed works. It is considered however that the restoration proposals will enhance the existing habitats.

Health

41. The applicants refer to the Dolk report (published in the Lancet August 1998) and the County Council's decision on the New Albion Waste Disposal site and conclude that there is no causal link between landfill and birth defects and states that the Department of Health considers that it provides no basis to prohibit the development of new landfill sites.

Traffic

42. The applicants have submitted a Traffic Impact Assessment (TIA). It concludes that there will be an increase in overall traffic of about 10% as a result of this proposal with an increase of up to 40% in HGV traffic on some local roads close to the site access to the north, but that this is unlikely to cause significant impact given the existing flows on the roads and the location of the site. Two highway improvements are recommended by the TIA: improvements to the visibility to the right, turning out of the Wood Road staggered junction; possible improvements to the ghost island at the site access. The applicants are prepared to make these improvements if permission was to be forthcoming.

Water Resources

43. The ES concludes that the location of the site in low permeability mudstones and the design for the containment and control of leachate mean that potential for migration of leachate would be ver low and unlikely to have any impact on groundwater quality. The ES recognizes that there is a current pollution problem with acidic water draining off the bare colliery spoil. One of the consequences of the development of the site is to secure a permanent solution to this ongoing issue.
44. Infilling is proposed to take place in five cells and the operations will take place over five phases with progressive restoration.
45. It is proposed to restore the colliery spoil mounds around the perimeter of the site and to progressively fill in and restore the bowl in the center in the centre. It is proposed to raise the level of this bowl to that of the mounds. The proposed restoration levels of the landfill have been designed to tie in with the contours of the existing spoil mounds and no part of the restored landfill will be higher than 174 metres AOD of the restored perimeter colliery spoil mound.

Planning History

46. Naistone Colliery was established in 1865 and the background to coal mining at the site has been outlined above. The relevant planning history is set out below.

3 November 1989	Planning Permission no. 89/0529/4 granted for tip washing and restoration - site to be restored within 1 year of the cessation of the coal recovery operation and certainly no later than by the end 1998
14 March 1991	Leicestershire County Council's Planning and Recreation Committee resolved to grant permission for 16 hr operation subject to the signing of a legal agreement requiring HJ Banks to take part in a site liaison committee
19 November 1992	Condition 21 part(e) approved (final restoration contours)
21 January 1993	Remainder of tip washing restoration scheme approved
3 February 1993	Permission refused for landfilling application no. 91/0701/4
5 March 1993	Appeal lodged against planning refusal for landfilling by HJ Banks and British Coal
29 October 1993	Permission refused for planning application no. 93/0491/4 - Second Planning Application no.93/0491/4 submitted by HJ Banks and British Coal for landfill
November 1993	Appeal against refusal application no. 93/0491/4
December 1993	Public Inquiry into refusal of application no. 93/0491/4.
September 1994	Appeal dismissed (by SoS) planning application no.93/0491/4
October 1994	High Court Challenge against SoS's decision
25 May 1995	HJ Banks write to Council asking for Nailstone Colliery to be considered as a waste disposal site in the Waste Local Plan
October 1995	High Court Quashed SoS's decision
November 1995	SoS appealed to Court of Appeal
October 1996	Court of Appeal allowed appeal
25 October 1996	Planning permission for revised tip washing restoration scheme granted to HJ Banks

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January 1997	Consultation Draft Waste Local Plan published Nailstone ranked 5 th out of 6 potential sites
12 May 1997	Planning Contravention Notice served on Terry Adams, British Coal and HJ Banks seeking clarification of responsibilities in respect of restoration
5 & 6 February 1998	Pre application public exhibitions held in respect of proposed landfill application
17 April 1998	Planning Application no. 98/0280/4 for landfill at Nailstone Colliery submitted by Terry Adams
30 July & 5 October 1998	Council asks Terry Adams for additional information on planning application no. 98/0280/4
November 1999 -March 2000 October 2000	Waste Local Plan Inquiry held Waste Local Plan Inquiry Inspector's Report received. Inspector rejects inclusion of Nailstone Colliery in the Plan
8 February 2001	Council's Development Control and Highways Regulatory Board agree to take enforcement action
30 March 2001	Enforcement Notice served
29 April 2001	Enforcement Notice appeal lodged
9 July 2001	Additional information in respect of application no. 98/0280/4 provided by Viridor
1 October 2001	Councils agree to put on deposit Waste Local Plan Modifications. Nailstone Colliery not allocated

Planning Policy**National Policy**

47. The **National Waste Strategy 2000** sets out the Government's aim to comply with European directives on reducing the reliance on landfill as a means of managing the nations waste. It sets out targets for recycling and recovery, reaffirms the concept of the waste hierarchy, regional self sufficiency, the proximity principle and the determining waste management treatment using the Best Practical Environmental Option (BPEO). There is a target to reduce biodegradable municipal waste sent to landfill to 75% of 1995 levels by 2006, 50% by 2009 and 35% by 2016 (although they are all subject to a 4 year derogation).
48. There is also a target to reduce industrial and commercial waste sent to landfill to 85% of 1998 levels by 2005..

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49. In terms of recovery it sets targets to recover value 40% of municipal waste by 2005; 45% by 2010, and 67% by 2015. For recycling, it sets out targets to recycle or compost at least 25% of household waste by 2005, 30% by 2010 and 33% by 2015.
50. **Environment Agency: Strategic Waste Management Assessment 2000: East Midlands (November 2000)** sets out data on waste arisings, deposits, treatment and movement in the Region.
51. **Planning Policy Guidance Note 1 (PPG1) General Policy and Principles** sets out the general approach to dealing with development proposals. It states that an application for planning permission shall be determined in accordance with the development plan unless material considerations indicate otherwise. It also advises that questions of prematurity may arise where a development plan is in preparation and where development proposals, if granted, would prejudice the outcome of the plan process by predetermining decisions about the scale, location or phasing of new development which ought properly to be taken in the development plan context. The weight to be attached to such plans and policies will depend upon the stage of plans preparation, increasing as successive stages are reached.
52. **PPG10 Planning and Waste Management (September 1999)** sets out specific planning guidance on waste management developments. It reflects the national waste strategy principles of BPEO, regional self sufficiency, proximity principle and the waste hierarchy. It advises that waste management facilities should be located where there is the least adverse impact on the local population and the environment.
53. **PPG23 Planning and Pollution Control (July 1994)** sets out how planning authorities ought to take into account aspects of pollution control and responsibilities of other agencies (i.e. the Environment Agency)
54. **MPG5 Stability in Surface Mineral Workings and Tips (January 2000)** gives advice on the exercise of planning control with respect to stability in surface mineral workings and tips. It states that where development is proposed in or near the slopes of abandoned quarries or tips, local planning authorities should seek information from applicants in respect of stability reports prepared by a competent person.
55. **MPG11 The Control of Noise at Surface Mineral Workings (1993)** sets out guidance on the control noise which also applies to waste developments. The Government's view is that during the working week the daytime nominal limit at noise sensitive properties used as dwellings should normally be 55 dB $L_{Aeq, 1h}$. A lower nominal daytime limit might be appropriate in quieter rural areas if a limit set at 55 dB $L_{Aeq, 1h}$ for noise from the proposed development would exceed the existing background noise levels by more than 10 dB(A), although a limit below 45 dB $L_{Aeq, 1h}$ would not normally be appropriate.
56. MPG11 is currently being revised and the consultation Draft MPG11 (Controlling and Mitigating the Environmental Effects of Minerals Extraction in England (May 2000)) considers the application of more stringent noise controls and lower limits.

Regional Planning Policy

57. **Draft Regional Planning Guidance for the East Midlands (RPG8) (Proposed Changes March 2001)** reflects national policy of a comprehensive hierarchical approach to waste management which include in priority order to:
- a. reduce the amount of waste that society produces;
 - b. make the best use of waste that is produced; and
 - c. choose waste management practices which minimise risks of immediate and future environmental pollution and harm to human health.
58. However, although the Regional guidance states that disposal of waste is likely to remain a significant component of waste management within the region, it adopts the national targets for waste recycling and reduction. Policy 66 sets out the targets and obligates planning authorities to take an integrated approach to waste management, make realistic assessments of likely future requirements, avoid excessive provision of landfill sites based on the continuation of past trends in waste management and encourage links with rail and water based transport. The Draft Regional Guidance also has policies that encourage the use of land in a sustainable way by endorsing the sequential approach of utilising previously developed land for development before using green field sites and enhancing the Region's biodiversity.

Local Planning Policy

59. **The Leicestershire Structure Plan 1991 – 2006** Mineral and Waste Policy 1 seeks to ensure that adequate waste disposal facilities are provided; Mineral and Waste Policy 2 provides that where development would cause demonstrable harm to interests of acknowledged importance it will normally only be permitted where the need for the development is sufficient to justify its environmental impact; Strategy Policy 1 refers to the regeneration of Priority Areas; Strategy Policy 7 refers to the priority areas in the County where measures will be focussed on alleviating the concentration of economic, environmental and other problems by giving special emphasis to the restoration and re-use of derelict land and more effective use of vacant and under-used land and buildings; Environment Policy 13 states that wherever compatible with other policies, the fullest use of derelict, vacant and underused land will be used for development, and to provide land for agriculture, forestry, recreation and nature conservation; Transport Policy 4 states that where proposed developments generate traffic that would exceed the available highway capacity, impair highway safety or have unacceptable effects on the environment then permission would not be granted unless satisfactory mitigation was provided.
60. The **Deposit Draft Structure Plan 1996 – 2016** has similar policies on waste to that of the approved Structure Plan but has been updated to ensure compliance with national waste strategy policies. The EIP Panel Report does not seek to amend the pre EIP changes submitted to the Inquiry. The Deposit Draft has policies also relating to the utilisation of brown field sites, regeneration strategies and the National Forest.

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61. **An Air Quality Strategy for England, Scotland, Wales and Northern Ireland (January 2000)** seeks to improve and protect ambient air quality in the UK in the medium term. It sets objectives for eight main air pollutants, including PM₁₀, to protect health and sets out targets for the standards to be met in Local Authority areas who will be responsible for administering the regime.
62. **Leicestershire, Leicester and Rutland Waste Local Plan: Deposit Draft (June 1998)** has been the subject of a Local Plan Public Inquiry. The Inspector's recommendations have been considered by the County Council and the County Council has approved Proposed Modifications to be placed on deposit. The Plan allocated one site for waste disposal at Newhurst to meet the needs of waste management facilities in Leicestershire, Leicester and Rutland. The Plan sets out policies as to how proposals for waste management should be considered and provides criteria against which such proposals should be judged. For non allocated sites, Policy 17 states that non allocated sites should not be permitted unless it can be demonstrated that the need to release the site cannot be otherwise reasonably met and that the development meets the criteria set out in Policy 8. Nailstone Colliery was considered by the Inspector as an allocation but was rejected by him and he recommended that the Nailstone be not allocated in the Plan.
63. **Hinkley and Bosworth Local Plan (Feb 2001)** identifies Nailstone Colliery for recreational activities. REC14 of the Plan allocates the Nailstone site for recreational activities, forest planting and landscaping including fishing and informal pursuits subject to environmental and highway considerations as set out in policy REC5. It states that all other forms of development will be resisted.
64. **Leicester, Leicestershire and Rutland Landscape and Woodland Strategy** was adopted as County Council policy in September 2000. Its objectives are to conserve and enhance the character, diversity and distinctiveness of the landscapes, identify appropriate opportunities for new woodland planting, and to promote sustainable management of existing woodland resources. The objective of the Coalfield area is to create new woodland landscapes as part of the National Forest and sets out a number of guidelines to follow.
65. **The National Forest Strategy** sets out the general approach to maximising opportunities to create the National Forest which will include woodland planting and other related land uses for sport, recreation and tourism, and conserving enhancing nature conservation.
66. **Biodiversity Challenge: An Action Plan for Leicester, Leicestershire and Rutland (July 2001)** is a plan that seeks to increase the biodiversity interest in the County and refers to various natural and biodiversity areas, including the Coal Measures area, which in particular encourages the recreation of heathland. The National Forest have produced their own Biodiversity Plan.
67. **Environment Agency Local Environment Action Plan (August 2000)** identifies Nailstone as a site requiring long term measures to combat the discharge of acidified mine water.

Consultations

Hinckley and Bosworth Borough Council - Planning

68. Hinckley and Bosworth Borough Council make the following comments regarding the application.
69. They consider the application unnecessary because they feel the site could be restored to an acceptable afteruse through the restoration and aftercare conditions approved under the tip washing operation granted permission in 1989. It considers that the proposal is unnecessary in terms of providing the means of restoring the site and would in fact delay it contrary to Strategy Policy 7 and Environment Policy 12 of the Structure Plan and Policy REC 14 of the Hinckley and Bosworth Local Plan.
70. The amount of traffic travelling to and from the site as well as general level of activity on the site would make it clear that a large landfill operation was in progress. This would have a serious effect on the regeneration efforts in that part of the coalfield Priority Area, contrary to the intentions of Strategy Policy 7.
71. The Council considers it essential that the Waste Local Plan be allowed to complete its process towards adoption before a decision is made on this application. They feel that granting permission for the proposal before the Plan is prepared would prejudice against other potential sites under consideration.

Hinckley and Bosworth Borough Council – Environmental Health

72. The Council's Environmental Health Officer (EHO) comments on the potential noise levels on the site and recommends that the limit of 55 dBL_{Aeq 1hr} would not be appropriate where lower background levels dictate that a lower limit would be required. He suggests specific noise levels at noise sensitive properties. With regard to dust he accepts that PM₁₀ monitoring could be carried out after planning consent has been granted but before a waste management licence is granted. On green waste composting he recommends that careful consideration should be given to odour problems since residential properties lie within 450m of the proposed composting area. A condition regarding noise from the flare stacks should also be included. A scheme of noise monitoring should be agreed between the operators and the MPA.
73. The EHO also recommends that operating hours on the site should be limited so that the site was closed on Saturday afternoons, Sundays and public holidays.
74. The EHO further recommends that litter and vermin controls should all be subject to conditions.

North West Leicestershire District Council - Planning

75. North West Leicestershire object to the application on the grounds of the environmental impacts of the proposed development on neighbouring communities.

Carlton Parish Council

76. The Council objects to the application because the site is not allocated in the Waste Local Plan as a site for waste disposal and the proposed development would be contrary to paras. 8.12.0 to 8.12.3 and Policy Rec14 of the Deposit Draft of the Hinckley and Bosworth Local Plan. They wished to see the restoration conditions attached to the coal washing permission enforced. The Council reiterated these comments when they were consulted on the additional information submitted by the applicants.
77. The Council were also concerned about potential contamination of Carlton Brook and Sence Brook from the proposed development.

Barlestone Parish Council

78. The Council object to the application on the grounds of unacceptable HGV movements, possibly from distant locations, concerns over controlling leachate and atmospheric emissions and the proposed development being contrary to the Waste Local Plan.

Bagworth Parish Council

79. Bagworth Parish Council raise concerns regarding the visual impact on new housing in Bagworth, the extra traffic turning at the Wood Lane junction and Station Road, Bagworth, potential health hazards and potential pollution of local water courses.

Nailstone Parish Council

80. Nailstone Parish Council wishes to object to the planning application in the strongest possible terms. They object on the grounds that the site is not included in the Waste Local Plan; that the traffic projections are inaccurate and underestimates the likely volume to be generated and the infrastructure would be hard pressed to cope with it; Government policy is to move away from land filling as a waste disposal strategy. The Parish Council state that they have been implacably opposed to this site being developed for waste disposal for many years and has fully supported the pressure group Residents Against Tipping.

Ibstock Parish Council

81. No representation received.

Environment Agency

82. The Agency raise no objection to the application provided that conditions are imposed are imposed to prevent pollution of the water environment and pollution of groundwater. The concerns they raised regarding the stability of the former lagoon areas have been adequately addressed in the additional information submitted and therefore the Agency has no objection to the spoil mounds being capped with 1.5m of soil forming material providing that the applicant minimises the risk of suspended solids entering the adjacent

watercourses. The Agency also refer to the ongoing water pollution problems caused by run off from colliery spoil heaps and a scheme to remedy the problem in the long term is welcomed. However, the Agency advise that should the situation deteriorate they have powers under the Water Resources Act 1991 to prosecute. Should the proposal not go ahead then the Agency would need to address long term remediation with the Company.

Coal Authority

83. The Coal Authority has raised no objection to the application. Five seams had previously been worked beneath the application site, the last date of working being 1964. The Authority expects ground movements from these workings to have now ceased but the applicant should be made aware of potential instability issues and the need to consult the Coal Authority should they arise in the future.

Civil Aviation Authority

84. The Civil Aviation Authority has no comments to make on the application.

Ramblers Association

85. The Ramblers Association support the restoration of the site which includes paths running through the site which will connect with existing Public Rights of Way. They do, however, raise concerns that the site may attract unwelcome motorcyclists and suggested means of keeping them off the site.

National Forest

86. The National Forest's comments are directed towards the landscaping and restoration elements of the scheme only and do not offer any comments on the wider planning merits of the scheme. In broad terms the fact that the site is to be restored is welcomed by the National Forest. However, the National Forest raised a number of points such as requiring details on the longer term maintenance of the site beyond the 10 year aftercare, reservations about techniques for planting on the spoil tip, and the need to maximise the potential for mixed afteruses. The National Forest have not yet responded to the additional information provided by the applicants which sought to address these points.

Department for environment, Food and Rural Affairs

87. The Farming and Conservation Agency, responding on behalf of MAFF, made no comments regarding the application.
88. Following further consultation, DEFRA, who have taken over responsibility for matters previously concerning MAFF, raise the issue that the applicants have not confirmed where the Mercia Mudstone to be used in the restoration of the site would be sourced. They wish not to see the material obtained from adjacent agricultural land as this would result in the potential loss of 'best and most versatile' agricultural land.

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Council for the Protection of Rural England

89. The CPRE oppose the application on the grounds of unacceptable HGV movements, concerns over pollution control, local community opposition and the proposed development being contrary to the Waste Local Plan.

English Nature

90. English Nature has withdrawn its original holding objection to the application following additional information supplied by the applicants which satisfied their concerns regarding uncertainties relating to potential protected species within the application area. They raise concerns, however, that the revised restoration scheme does not make explicit provision for maintaining suitable nesting areas during and after site operations for little ringed plovers. They recommend that this is addressed by planning conditions requiring the submission of detailed proposals prior to commencement of development. Similarly, planning conditions / obligation should ensure that water quality and management schemes ensuring habitats for great crested newts are addressed.

Severn Trent Water

91. Severn Trent Water raise no objection to the application but advise of the presence of a 150mm rising main to the north east of the site which is known to burst at certain points when under pressure.

Leicestershire and Rutland Bridleways Association

92. Leicestershire and Rutland Bridleways Association support the enhanced proposals for horse riding routes through the site, which were submitted as part of the additional information. They make additional suggestions regarding verge management, upgrading some footpaths to bridleways, better sight lines for horse users entering / exiting the site and provision be made for parking of horse boxes / trailers.

Newbold Heath Residents Association

93. Newbold Heath Residents Association object to the application due to the lorry movements through the village and the potential environmental impacts, including dust, odours, rodents, insects and savaging birds leading to potential health and environmental problems.

Highway Authority

94. The Highway Authority recommend conditions in the interests of highway safety which include matters relating to signage, road markings, visibility improvements to Ellistown Terrace Road junction, lorry routing, wheel cleaning facilities, positioning of site entrance gates, hard surfacing of access, drainage, gradient and design of access and off street parking.

Director of Museums, Arts and Records

95. The Director of Museums, Arts and Records welcomes the proposal and recommend further BAP priority habitats to be considered for inclusion, additional non BAP habitats to increase potential for wider range of species, extending the grassland interest into the recreational parts of the site, plantings to be native, common to the area and of local provenance, favour the 10 year aftercare and monitoring schemes and legal protection be afforded to bats, great crested newts and badgers.

Publicity

96. The planning application was advertised in the press, by site notice and neighbour notification in May 1998. Public meetings were held in the locality on 2nd July 1998 and 24th September 1998. The further information supplied was advertised on in the press, by site notice and neighbour notification in July 2001.

Representations Received

97. The County Council has received 108 letters of representation regarding the application. Most of the comments made (nearly 70%) referred to traffic, fears of pollution, general disturbance, noise, the proximity of the proposal to residential properties and fear of health effects. In summary the following points were raised:
- a. Increased lorry movements and their effect on public safety and amenity;
 - b. The application being similar to the one previously submitted and subsequently refused permission after appeal;
 - c. That the restoration scheme from the tip washing permission should be enforced and promises of it being restored not being fulfilled;
 - d. That the landfill proposals do not involve filling a hole, instead they involve raising ground levels and creating an unnatural looking mound;
 - e. Concern about the potential for pollution and environmental concerns including noise, dust, methane gas emissions, through leachates entering the water environment, odours, litter and seagulls and vermin populating the site and its surroundings;
 - f. The effects on the countryside, wildlife and landscape and the quality of village life;
 - g. The application site not being allocated in the Waste Local Plan and therefore not being needed;
 - h. Scepticism regarding the local employment benefits of the proposals or any other benefits;

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- i. The proposed development not being in accordance with the aims of the National Forest;
 - j. Fears regarding possible future extensions to the landfill site;
 - k. The stability of the former mine site;
 - l. The effects that the proposals would have on local's human rights and the effect of property values;
 - m. In addition to these concerns raised, one representation from a member of the public detailed their own plans to restore the site as it presently stands 'using a range of activities which demonstrate sustainable land use';
98. A petition was also submitted at a Public Meeting held on 2 July 1998 containing the names of 266 Nailstone residents who opposed the application.
99. Another petition from the residents of Battram was presented to the Inspector at the Waste Local Plan Public Inquiry. Seventy-nine households signed the petition opposing the use of the site as a landfill.

Assessment of Proposal

100. Nailstone Colliery is a former mine and tip washing facility. The 54ha of land occupied by these former uses is degraded and visually prominent from nearby residential settlements in this otherwise gently undulating agricultural landscape. In particular the grey-black northern flanks of the site facing Battram is a constant reminder of the legacy of former mine workings resulting from the lack of proper restoration. The site suffers from an ongoing acid water run off problem that is being kept at bay by temporary treatment but that needs to be addressed on a permanent solution. The proposal seeks to deposit 2.28 million tonnes of waste at the site over a nine year period which will result in the restoration of the site to amenity and nature conservation uses.
101. The key issues in this case that need to be considered are:
- a. the development plan and planning policies that apply to waste disposal proposals and other relevant policies;
 - b. the context within which the proposal is being put forward in terms of the previous uses, decisions and current state of the site;
 - c. the environmental impacts that the proposal may have on surrounding land uses and nearby residential properties;
 - d. the benefits that might accrue as a consequence of the site going ahead, including the need for the development.

Planning Policies

102. The starting point of any development consideration is the development plan and other relevant planning policies.

103. The development plan for the Leicestershire comprises the Leicestershire Structure Plan 1991 – 2006 and the Hinckley and Bosworth Local Plan. The Leicestershire, Leicester and Rutland Waste Local Plan Proposed Modifications have now been approved to be placed on deposit and is therefore relevant planning policy that needs to be taken into account.
104. The Leicestershire Structure Plan 1991 – 2006 Mineral and Waste Policy 1 seeks to ensure that adequate waste disposal facilities are provided and this has been carried out through the Local Plan process. The Leicestershire, Leicester and Rutland Waste Local Plan makes provision for waste management facilities up to 2006. A Public Inquiry into objections to the Plan was completed in March 2000. The Plan allocates one landfill site at Newhurst and together with other permitted and existing facilities it adequately provides for waste management in Leicestershire, Leicester and Rutland for the Plan period to 2006.
105. The Nailstone site was considered for inclusion in the Plan but the site was not supported by either the County Council nor in the Inspector's recommendations. Allowing Nailstone to be developed on a landfill site would be contrary to Policy 16 of the Waste Local Plan as proposed to be modified.
106. Mineral and Waste Policy 2 in the Structure Plan provides that where development would cause demonstrable harm to interests of acknowledged importance it will normally only be permitted where the need for the development is sufficient to justify its environmental impact. Also, as a non allocated site, the Nailstone proposal needs to be considered against Policy 17 of the Leicestershire, Leicester and Rutland Waste Local Plan which states that non allocated sites should not be permitted unless it can be demonstrated that the need to release the site cannot be otherwise reasonably met and that the development meets the criteria set out in Policy 8. The applicants have put forward a need argument and this will be considered later in this report and will be balanced against the assessment of the environmental impact of the proposal.
107. In terms of the final restoration of the site, the end uses of woodland, heathland and recreational uses the development meets some of the aspirations of local biodiversity objectives and enhancement of local landscapes in this coalfield area, such as those set out in the County Council's Landscape Strategy.
108. What has to be judged, however, is whether the method of delivering that final outcome is justified in terms of environmental impact and other planning policies and objectives.

Context of the Nailstone site

109. As mentioned already at the beginning of this report, the Nailstone site has had a long and chequered planning history. The consequences of previous operations at the site has left the Nailstone site in a degraded state with a mixture of bare colliery spoil heaps around a central area of bare spoil, concrete hardstanding, demolition rubble and former coal stocking areas with remnants of ancient and regenerated woodland and former lagoons. The large spoil mounds are the most visually significant detracting elements in the local

landscape of gently undulating agricultural land. They stand out from most viewpoints as alien incongruous local ridges accentuated by their dark, sombre colour and general lack of vegetation. In many respects they form a significant local eyesore and have done so for many years to the detriment of local people who live and work in the area. The existing restoration requirements have proved difficult to implement and the on going water run off problems have not helped the situation. In part, there has been a failure by the previous operators of the site to attempt to tackle the restoration of at least the most visible parts of the site and the current applicants have made no attempt to address that problem since they purchased the site in 1996.

110. After long and protracted negotiations and discussions with the applicants to try and resolve restoration of part of the site, the County Council has had to resort to enforcement action to try and remedy the worst excesses of those failures. That enforcement action has been appealed by the applicants and a public inquiry into that appeal is to be held on 24th and 25th October 2001. There is therefore significant advantage to see the Nailstone site restored in some way and the applicant's proposal to landfill the site is their way of promoting the restoration of the site. In their view they see this is the only viable way of achieving a long-term solution to the continuing harm to amenity that the current state of Nailstone represents.
111. If the County Council's enforcement action is successful then there will be amelioration of the most adverse impacts that the site currently exhibits. In many ways the ultimate restoration of the site proposed by the applicants complies with other policy objectives to bring into beneficial use derelict, vacant and previously used land. For instance, Environment Policy 13 of the Structure Plan states that wherever compatible with other policies, the fullest use of derelict, vacant and underused land will be used for development, and to provide land for agriculture, forestry, recreation and nature conservation. There is no doubt that, if implemented properly, the restoration scheme forming part of this proposal will provide that benefit. However, that benefit must be balanced against the method of achieving it, i.e. landfilling of 2.28 million tonnes of waste over a nine year period and the time taken for the site to mature to the intended after use. The impact of that process will need to be balanced against the final outcome and the need for a further waste disposal site when set against other provisions and policies for dealing with the County's waste.

Environmental impacts

112. The operation of a major landfill in this rural area will undoubtedly have some impact on the local environment. Whether that impact is acceptable needs to be judged by considering those individual impacts both singly and together.
113. The key impacts can be summarised as follows:

Visual

114. Whilst the term landfilling is used throughout this report in reality the operations are to take place above ground within the bowl area formed by the outer spoil mounds along the eastern, northern and western boundaries. Nothing in the

proposals will alter the fact that a large intrusive dome will be present in the landscape although clearly greening and planting will soften its visual impact. Given the state of the spoil mounds it may be that there is little alternative in any restoration scheme that would alter the fact that this feature will remain. Whilst the majority of the tipping operation will take place within the bowl areas, operation in the latter phases of each cell will be clearly visible above the existing mounds from surrounding viewpoints and pre settlement levels will extend above the height of the existing spoil mounds for some period of time while the waste settles. The fact that there will remain a prominent landform in the landscape, even if greened and planted, on balance weighs against the proposal.

Noise

115. The applicants have conducted three noise surveys at different times: January 1998, November 1998 and September 2000, at specified noise sensitive locations. These results vary and the applicants have averaged them over the periods to set background noise levels against which they have assessed the predicted noise impacts of the proposal (see para 25 above). Noise climates change over time and even the latest survey undertaken is more than 12 months old. What this shows is that the area in and around Nailstone Colliery is predominantly an “exceptionally quiet rural area” as advised in MPG11 (i.e. those areas where background noise levels are below 35 dB(A)). MPG11 advises that in exceptionally quiet rural areas a condition limiting operations to a 10 decibel excess over the existing background level is likely to be both difficult to achieve and unduly restrictive. It goes on to say that it would not normally be appropriate to require a daytime limit below 45 dB $L_{Aeq\ 1h}$, as such a limit should prove tolerable to most people in rural areas and that the exercise of care and some flexibility are important in addressing these issues.
116. If the most recent data is used then appropriate background levels and predictions are as follows:

Nailstone Noise Assessment				
Location	L_{A90} (Background levels – September 2000)	$L_{A90} + 10dB$ Value or 45dB if background less than 35dB	Predicted worse case $dB_{L_{Aeq}}$ (1 hour) (Normal operations)	Comparative values $dB(A)$ (exceedence above actual background)
Batram Road	31.8	45.0	44.0	-1.0 (12.2)
The Bungalow	38.2	48.2	49.0	+1.2 (10.8)
Lodge Farm	40.0	50.0	48.0	-2.0 (8.0)
Grange Cottages	34.5	45.0	49.0	+4.0 (14.5)
Nailstone Wiggs Farm	32.1	45.0	51.0	+6.0 (20.0)

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117. The question of noise is a difficult and sensitive area and whilst quantitative measures aid assessment they do require interpretation. Whilst the Hinckley and Bosworth's Environmental Health Officer's recommendations on noise limits are more generous than those above, the interpretation set out above follows more closely the guidelines in MPG11. The predictions are worst case and it is clear that the worst case noise regime will not be present at all times. On the other hand, there will be noisier temporary elements to the proposal, such as bank formation, which is normally acceptable for short periods of time (e.g. no more than 8 weeks per year) in order to facilitate development. In order to mitigate the excess noise impacts the applicants have stated that they would be prepared to consider the installation of acoustic double glazing for people who live in noise sensitive properties, if required. However, this would not resolve people's enjoyment of their gardens and the public footpaths in and around the site.
118. The Government issued a consultation paper on the revision of MPG11 (May 2000). Although this is not current government advice, consideration is being given to imposing stricter controls over noise.
119. From the analysis, the proposals would appear to have an adverse noise impact on noise sensitive properties. Whether or not these can be overcome is unclear, but there is no doubt that residents in the locality will experience noise levels not normally associated with this quieter rural area and to this extent this is a factor that weighs against the development.

Air Quality and Odour

120. Any such proposal has the potential to generate dust and other emissions into the atmosphere. The applicants are prepared to implement a comprehensive dust control scheme and have undertaken to carry out PM₁₀ survey and analysis in line with the advice of the Environmental Health Officers. These measures can be controlled through the imposition of appropriate planning conditions and it is unlikely that dust emissions would create undue harm to amenity.

Health impacts

121. Several objectors have raised concerns about the impact that landfill will have on health. The latest Government research carried out by the Small Area Health Statistical Unit (SAHSU) into the relationship between health and landfill published its findings in August 2001. The study was commissioned in response to public concerns about the possible health effects of living close to landfill sites. SAHSU, an independent unit funded by government departments, found that 80 per cent of the UK population lives within 2 kilometres of a landfill site. The group examined 9,565 landfill sites that were in operation between 1982 and 1997. It is the most extensive study into landfill sites anywhere in the world. The Department of Health's press release stated:

“The SAHSU study says that it is not clear at present that landfills are causing these effects and that other explanations are possible. These could include limits in the information available for the study, or the possibility that the study did not completely take into account other factors which increase the risk of birth defects or low birth weight. They recommend that further work is done to distinguish between these possibilities.”

122. Although these findings are inconclusive, objectors perceive the proximity of the proposed landfill a risk to their health. Perception of fear of a risk to health and quality of life can be a material planning consideration and has to be weighed in the balance based on the evidence available. There is no doubt that local people do hold genuine fears about the health risks that this proposal may cause should it go ahead but given the evidence of the research and other controls that would be in place (such as waste management/IPPC) the weight to be afforded to that perception must be limited.
123. With regard to odour, the proposed management of the site should ensure that odour does not adversely affect the amenities of local residents. However, with regard to the composting element, experience in the County has highlighted the potential odour problems that could occur should this type of proposal go ahead. Whilst the Government’s waste strategy encourages the composting of green waste, its operation would need to be carefully managed and operated if it is not to cause nuisance. The applicants have already stated that they wish to pursue the aspect of composting on the site as a separate proposal at a later stage but that even then their intention is not to operate it after the landfill is closed. In principle however, they have indicated where such a facility might be located.

Traffic

124. The Highway Authority has not raised objections to the proposed development on highway grounds. The introduction of 164 HGV movements along approved lorry routes, the majority of which are proposed to come from the north, would not create significant adverse impact to the locality. Whilst this is an area that most objectors are concerned about, Transport Policy 4 of the Structure Plan states that where proposed developments generate traffic that would exceed the available highway capacity, impair highway safety or have unacceptable effects on the environment then permission would not be granted unless satisfactory mitigation was provided. The applicants are prepared to make some highway improvements to the local highway network and therefore would meet the objectives of the policy.
125. Whilst there are no highway objections to the proposal, this level of activity continuing for 9 years would not go unnoticed by local residents and those travelling through the area and would therefore continue to give some sense of disturbance to this rural area.

Other impacts

126. It is considered that controls to manage litter, birds, pest and vermin can be imposed and if properly carried out should not cause significant harm to local amenities.
127. In terms of policy objectives, Strategy Policy 1 and 7 of the of the Structure Plan refers to the regeneration of the Priority Areas in which this site is located. When a previous planning application for waste disposal at Nailstone was considered, the appeal inquiry inspector concluded (September 1994) that the development would have a serious and deleterious effect on the regeneration of the area. Whilst some of the circumstances that led the Inspector to come to those conclusions have been overtaken by events, regeneration of the Priority Areas is remains a policy objective. The Waste Local Plan Inspector (October 2000) more recently concluded that he was not convinced that the waste disposal operations as currently proposed by the applicants are the only, the quickest or the most effective way of restoring the site.
128. The Hinckley and Bosworth Local Plan Policy REC14 allocates the site for recreational activities, forest planting and landscaping including fishing and informal pursuits subject to environmental and highway considerations as set out in policy REC5. It also states that all other forms of development will be resisted. The development of the site as a landfill would fall into the category of other forms of development and therefore would not comply with that policy. That policy envisages the site being restored by means other than landfill.

Need and other benefitsNeed

129. The applicants set out that there is a need for additional capacity to meet the waste arising from Leicestershire, Leicester and Rutland based on the assumption that disposal capacity at New Albion and Cotesbach will be taken up by imports from outside the Waste Local Plan area and that Nailstone is geographically well placed to meet the shortfall in capacity. They have modelled calculations, based on certain assumptions, in an attempt to demonstrate that shortfall.
130. The Waste Local Plan Inquiry analysed the data put forward by the Councils in depth and the Inspector was content that the provisions made in the Plan would meet the needs of the Plan area for the Plan period. The applicants promoted Nailstone at the Inquiry as a potential site but this was rejected by the Inspector who was satisfied that the Plan fulfilled its obligation in meeting the need for waste disposal.
131. In summary the need argument put forward by the applicants is not accepted for the following reasons:
- a. A thorough examination of the need to provide for waste disposal facilities in the Plan area has recently been carried out through the Waste Local Plan inquiry process, which is the correct and proper planning forum to

determine the need for waste management facilities. Nailstone was rejected as an option for allocation and the Proposed Modifications which are due to go on deposit do not allocate Nailstone as a site on the basis of, amongst other things, it not being needed. Although Nailstone was promoted at the Local Plan Inquiry as a substitute for Newhurst the Inspector clearly concluded that not only was it not a suitable substitute but that it was also not suitable as an additional allocation, since in his conclusions he states: *"I see no basis to substitute Nailstone Colliery for Newhurst Quarry or to add it to the allocations on Policy WLP16"* (my underlining);

- b. The assumptions made in the applicants calculations are just that. They have not dealt with the issue that both New Albion and Newhurst have the potential to increase annual capacity to cater for any fluctuations in shortfalls, an issue that was considered by the Inspector and figured in his considerations. Furthermore, the potential for rail transport to New Albion is yet to be fully explored;
 - c. In land use planning terms the Plan makes adequate provision. Whether or not the void space is actually used to take all of Leicestershire's waste will largely depend on the contracts that are let by the Waste Disposal Authorities. All the sites allocated and operative in the Plan area are available to take Leicestershire's waste;
 - d. The National Waste Strategy envisages a reducing reliance on landfill as a means for dealing with waste and has set ambitious targets to reduce that reliance although clearly there will be a continuing role for landfill as a final disposal option. If those targets are to be achieved then the planning system has to play its part in striking the right balance in making adequate provision. The Waste Local Plan does that and adding additional landfill capacity in the Plan area will not assist in meeting those targets. An over capacity of landfill provision would be contrary to and may undermine national policy objectives.
 - e. Reference has been made by the applicants to the publication of the Strategic Waste Management Assessment for the East Midlands which shows an apparent discrepancy in industrial and commercial waste arisings. This matter has been addressed with the Environment Agency who prepared the Assessment and has been dealt with in the Proposed Modifications to the Waste Local Plan.
132. The applicants also makes the proposition that "need" in Polcy 17 refers also to the need to restore the site and solve the water pollution problem. This is not accepted since the proposed modification to the text that explains the policy makes it clear that Policy 17 would only be applicable *"in the event of permitted and allocated sites not reasonably meeting the need for landfill/landraise capacity in the Plan period"*. Thus as far as Policy 17 in the Waste Local Plan is concerned the need for this site is not accepted or proven and this factor weighs fatally against the proposal.

Other benefits

133. The ultimate restoration of the Nailstone site is a potential benefit of the scheme. It meets many biodiversity, landscape enhancement and regeneration objectives promoted by the County Council and others, although on a detailed point it would be inappropriate to have mountain bike track and bridleway running over the same ground and it would be better if these were separated. Generally, however, the restoration in itself would bring a welcome end to the visual eyesore of Nailstone Colliery and bring to an end the uncertainty that has been hanging over this site and the local community for some years now provided that the scheme can be actually achieved. Although the 10 year aftercare period should give greater surety to the restoration being a success longer term management of the site is an issue that remains unresolved. Having said that, it must be borne in mind that even if the scheme is carried out to the highest standards it will be many years before any maturity is reached or the site is free of emissions such as gas. Full benefit of the restoration may not be apparent for 25 years or more.
134. The provision of employment is clearly a benefit and there will be an economic effect by the expenditure on local services required to run the operations.
135. The site currently has a problem with acidic water run off due to the nature of the bare colliery spoil mounds. This is being addressed by the Company under the supervision of the Environment Agency by chemically treating the run off as a short term measure. One of the benefits that the applicants promote as a consequence of this development is the long term and permanent solution to the water pollution problem by capping the spoil mound with soil making material and seeding / planting it. This is a desirable benefit which the County Council would encourage the applicants to pursue regardless of the outcome of this proposal. However, sealing the outer mounds does not require the site to be landfilled.
136. There will be some minor highway improvements which would be required as a consequence of the development but which will remain on completion of the development.

Human Rights

137. A proportion of objectors highlighted the effect that the development would have on their human rights and their rights to enjoy their private property. When making planning judgements, the County Council has to consider whether the decisions that it is making under the Town and Country Planning Acts are compatible with the Human Rights Act 1998.
138. There is a hierarchy of Convention rights: some rights are absolute, some can be limited and some are qualified. The planning system is generally concerned with qualified rights. These include the right to respect for private property and family life, the right to freedom of expression, religion and association, the right to the peaceful enjoyment of property and to some extent the right to education.

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139. Interference with these rights is permissible in certain circumstances. Any interference must, however, have its basis in law, be necessary in a democratic society and be related to the permissible aim set out in the relevant Article.
140. The planning system in regulating the use and development of land in the public interest is a process where the competing and often conflicting demands for the use and development of land is exercised in a participative and public way; where the freedoms of one set of individuals to develop land has to be balanced against the impact that those developments may have on the rights of other individuals and the wider community.
141. In this case, the proposed development may have an effect, either perceived or real, on the rights of people to the peaceful enjoyment of their private property by virtue of potential noise, traffic and visual impact. As the need for the development is not justified, the potential effects of the development are not outweighed by other benefits that may accrue in granting planning permission. In other words, the interference with people's human rights that could occur should this proposal be allowed may not be justified given the scale of the proposal and its relative impacts when set against the lack of need for the development.

Conclusions

142. Nailstone is not allocated in the Leicestershire, Leicester and Rutland Waste Local Plan as a site for waste disposal. Its merits were considered in detail by the Local Plan Inspector at the Local Plan Public Inquiry. His conclusions and recommendations were that Nailstone be not allocated as a site in the Plan.
143. In terms of overall need, the Leicestershire, Leicester and Rutland Waste Local Plan has identified sufficient capacity to meet the waste disposal needs of the Plan area. The Inspector concluded and recommended that the need for waste disposal can be met by the allocations in the Plan.
144. Nothing that the applicants have submitted in terms of justifying the need for the development would lead to overturning the conclusions reached in that debate.
145. The stage at which the emerging Leicestershire, Leicester and Rutland Waste Local Plan has reached means that a significant amount of weight can be given to it. The need for additional capacity in the Leicestershire, Leicester and Rutland Waste Local Plan area is not justified.
146. Given that there the site does not feature in the emerging Leicestershire, Leicester and Rutland Waste Local Plan nor does it meet the need criteria of Policy 17, the impacts that the development will have on the locality are not justified. The noise criteria set out cannot be met at this time and in visual terms, although the restoration of the site will provide some benefit, it will be clear to local residents that waste disposal activities are taking place. Even after restoration it will be obvious that the restoration shape would remain an alien feature in the landscape. Having said that, it may be that given the nature

of the existing features, this may in any event be unavoidable. Similarly, whilst there are no highway objections to the proposal the additional traffic will no doubt add to the sense of disturbance and continued activity at the site.

147. There is no doubt, however, that the ultimate restoration of the site to woodland, heathland, footpaths, water and recreation use is a potential benefit and provided it is managed properly should produce the desired shape and planting regime, although it will take many years for the site to reach maturity in this regeneration priority area. Whilst the end result of the restoration complies with part of the Hinckley and Bosworth Local Plan Policy REC14 it does not comply with it to the extent that the policy seeks to resist all other forms of development, which in this case would be the landfilling element.
148. However, the means and the length of time it would take to achieve the benefits of the proposal are not justified given the policy objection to the site in terms of need. For this reason and for the reasons set out in the report that the development cannot be justified and should be refused.

Recommendation

1. That the proposed development be REFUSED on the grounds that it is not allocated as a site in the emerging Leicestershire, Leicester and Rutland Waste Local Plan and does not meet the requirements of Waste Local Plan Policy 17 in that the need for the development has not been demonstrated and the development will have unacceptable impacts having regard to Waste Local Plan Policy 8.
2. The proposed waste disposal development is contrary to Policy REC 14 of Hinckley and Bosworth Local Plan in that the site is allocated for recreational activities, forest planting and landscaping including fishing and informal pursuits and where development for other than those uses will be resisted.

Policies and Proposals in the Development Plan Relevant to the Decision

Leicestershire Structure Plan: Mineral and Waste Policy 1; Mineral and Waste Policy 2; Strategy Policy 1 & 7; Environment Policy 13; Transport Policy 4
Policy REC 14 of Hinckley and Bosworth Local Plan.

Circulation Under Sensitive Issues Procedure

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DEVELOPMENT CONTROL AND REGULATORY BOARD

The considerations set out below apply to all preceding applications.

EQUAL OPPORTUNITIES IMPLICATIONS

Unless otherwise stated in the report there are no discernible equal opportunities implications.

IMPLICATIONS FOR DISABLED PERSONS

On all educational proposals the Director of Education and the Director of Property 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.

You are advised to contact the County Council's Assistant Personnel Officer (Disabled People) if you require further advice on this aspect of the proposal.

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 54A OF TOWN AND COUNTRY PLANNING ACT 1990

Members are reminded that Section 54A of the 1990 Act requires that:

"Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

Any relevant provisions of the development plan (i.e. the Structure Plan or 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:

- 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 (the phrase occurs also in the new s. 172 which is substituted by the Planning and Compensation Act 1991, but not in the new provisions relating to planning contravention notices (new s. 171C) and breach of condition notices (new s. 187A);
- 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.