

Site Restoration

If the Hilltop Opencast Coal Development is allowed to go ahead we, the Hilltop Action Group and the surrounding local communities, need to know that the quality of the development proposal meets the minimum standards required by regulations and the development is entrusted to a competent company who can bring the development to a satisfactory conclusion, restore the site according to the agreed plans for site restoration and meet the conditions attached to the decision.

As stated by members of Parliament in a debate on “Restoration of Open-cast Sites” which took place on 29/01/2015 there is a national problem regarding open-cast sites where developers declare bankruptcy and disappear after they have walked away with the profits of the coal extraction. This is apparently due to the Coal Industry Act of 1994 and the Restoration protocols not being watertight.

Jonathan Edwards, (Carmarthen East and Dinefwr), (PC), said

“The status quo, where the law effectively permits operators to walk away from sites that they have no inclination to restore, can no longer remain an option.”

Ian Lavery (Wansbeck), (Lab), said

“We cannot have private companies raiding the countryside, ripping it back like the proverbial sardine-can and taking the coal out, and then leaving without restoration. We cannot accept that. From now, any company, or any director who is involved in a company, that produces coal and then leaves things in such a state should never be allowed to be part of an application in the future. This should be fundamental – it should be basic – and it would protect the people we represent.”

I'm sure we are all aware of the crisis in Scotland regarding the un-restored opencast sites when Scottish Coal and ATH Resources went bankrupt. At the time of that crisis the price of European Coal varied between £55 - £60 per tonne. Since then the European Coal price has fallen to £38 (Jan 2015).

As a consequence of the above, the Welsh Government commissioned a review of its own Surface Coal Mine Industry. The report was published as “Research into the failure to restore opencast coal sites in South Wales”. In April 2014 (2), estimated that Wales potentially faced a similar problem.

Since the Scottish Mining Restoration dilemma broke there has not been a similar review of English surface mine operations to see how robust the English Planning system is at assessing the risks associated with opencast mining and whether sufficient safeguards exist to prevent any kind of repeat of the Scottish Experience.

Mining for coal is in decline and companies operating in an industry in decline face significantly different financial pressures from those operating in a stable or expanding business environment. As credit dries up it becomes increasingly difficult to get insurance based Restoration Bonds.

There is evidence that no market exists for the provision of an insurance based restoration bond. This lack of a market is itself, an indication of how big a risk opencast mining is, given the current price of coal and the future decline in the market for coal in the UK. The lack of such a market should itself be considered a significant material consideration when assessing this planning application.

Having an insurance based bond is the only guarantee that should the worst happen and this company goes bankrupt, then a fully paid up bond exists to restore the site. However, a bond must be sufficient to fully restore the site and provide the after care needed, and premium payments should be monitored to ensure they are paid on a regular basis. Money paid in should also be ahead of the restoration costs. Councils should also not accept insurance as cover unless the premiums are paid up front and in full to the Mineral Planning Authority concerned. If the company does not pay its premiums the Insurance Company does not pay out. **Such is the importance of this material consideration that the Hilltop Action Group suggests that if it is impossible to put such an insurance based bond in place, then this application should be rejected.**

Iain Wright (Hartlepool), (Lab), Shadow Business, Innovation and Skills Minister, said in the aforementioned debate

“Ensuring that sufficient resources are available to restore open-cast sites to a proper state is important. It is universally agreed, I think, that the key principle for the approval and ongoing use of open-cast mines is that operators have an obligation to both local communities and the environment to clean up after themselves, and that financial provision should be made to allow that to happen.

Unrestored sites are unacceptable as they pose a risk to local communities. Equally, I would question whether it is for taxpayers to pick up the bill, especially when the selling of the coal generated cash and profits for the company, a proportion of which should have been apportioned to the costs of restoration. An additional complication is the falling world price of coal, which means that operators may not generate the revenue anticipated, but will quite rightly be expected to bear the costs of restoration.”

Matthew Hancock, Minister for Business and Enterprise said

“There is also consensus that the operation of open-cast mining involves a resource that can be brought out from under the ground, and therefore that the

burden of restoration should fall not on the taxpayer but rather on those who benefit from the excavation and sale of the resource.”

We, the Hilltop Action Group, look to Derbyshire County Council, as the Mineral Planning Authority, to ensure that should Provectus Remediation Ltd be successful in their application to extract open-cast coal from Hilltop Farm, that the obligation of a full site restoration is carried out and on time with the proper aftercare that will be required. We do not expect or accept that taxpayers money should ever be involved in this process.

Durham County Council have recently devised a new 'pre-payment' Bond, after intervention by LAON (*Loose Anti Opencast Network*) at the Bradley Public Inquiry, which pointed out how operators have been able to request a payments holiday and get away with it. This was because the traditional bond was a 'post-payment' Bond, where the money was paid in after the overburden had been removed and the coal sold.

This new 'pre-payment' Bond has been accepted by all parties associated with the Bradley Site. It transfers control over the development of the site back to Durham County Council should the Appeal be upheld.

Hilltop Action Group therefore expects such a pre-payment Section 106 Agreement to form part of the determination meeting and not leave it to be decided on behind closed doors days, weeks or months afterwards.

[Thanks to Steve Leary of the Loose Anti Opencast Network (LAON) for some of this material]

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