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MINERALS PLANNING GUIDANCE:

APPLICATIONS, PERMISSIONS AND CONDITIONS

A memorandum on the Control of Mineral Working in England and Wales ('the Green Book') was first prepared in 1951 as a guide to the planning control of mineral working and to indicate the broad lines of policy on the planning problems raised by mineral working. A revised edition was published in 1960. There have since been further changes in the statutory provisions and in Government policy and revised guidance to explain these changes has been prepared. This will be issued as part of the Department's series of Minerals Planning Guidance Notes. The first note (MPG 1) covered the general principles and national policy considerations of minerals planning with specific advice on the development plan system. This second note covers planning applications for minerals development, planning permissions and the imposition of planning conditions. Future notes will deal with the review of mineral workings, the reclamation of mineral workings and the General Development Order.

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Introduction

1. Before making a formal application to carry out development the applicant should consult as fully as possible with the appropriate local planning authority. In the case of development consisting of the winning and working of minerals or associated operations this will be the mineral planning authority, but mineral operators may on occasions wish to undertake development for which the district council are the appropriate planning authority. A clear understanding by all concerned of the proposed development and its impact on the environment will help in the preparation of plans for the operations and subsequent reclamation of the site and could avoid delays at a later stage.

Is a planning application necessary?

2. It will not always be necessary to make an application for planning permission before carrying out operations on land or making a change in the use of land. The operations or use proposed may not constitute development within the meaning of the Town and Country Planning Act 1971 (the 1971 Act); even if they do constitute development, they may be exempted by the Act from the need for permission, or permission for them may have been granted by the General Development Order (the GDO).

Application to determine whether or not an application for permission is necessary

3. Where the person who intends to carry out operations on land or to institute a new use of land is in doubt whether development is involved and, if so, whether an application for permission is required, he can, under section 53 of the 1971 Act, apply to the planning authority for a determination. He must apply to the district planning authority but in minerals cases they will forward his application to the mineral planning authority for determination.

Making a Section 53 application

4. The application must be in writing and contain a description of the operations or change of use proposed. It must be accompanied by a plan which identifies the land to which it relates. Where it concerns the carrying out of operations, any drawings that are necessary to describe the operations must also be included. Similarly where it concerns a change of use, a full description of the proposed use and the present use (if no present use then the last use of the land) must be included. Some district planning authorities have forms which may be used for making this type of application. A section 53 application may be made as part of an application for planning permission. Section 53 applications are subject to provisions regarding references and appeals to the Secretaries of State and applications to the High Court, as are applications for planning permission.

Pre-application consultations

5. The intention of pre-application consultations should be to develop an understanding by the planning authority of the operator's intentions and by the operator of the authority's views and requirements. They may also enable a start to be made on the investigations which are often necessary for mineral applications. The consultations could involve the mineral operator describing the proposed development and showing draft drawings possibly illustrating the various ways the site could be developed. During such consultations the planning authority may be able to help the applicant by providing the following guidance:

(a) Details of their policies on the type of development proposed and information about relevant planning decisions by the authority.

(b) Any likely changes of policy in the near future that would affect such development.

(c) An indication of the nature and extent of extra information that will be required to enable them to determine the application.

(d) The organisations the applicant can approach for advice.

(e) Organisations the planning authority will seek comments from concerning an application for such development. Such organisations may be able to disclose details of standards they use to judge such development or give their informal views on the proposed development.

Effective pre-application consultations should ensure that the operator is better able to produce plans and application documentation that will permit the planning authority to determine the application expeditiously. It is appreciated, however, that an element of confidentiality is likely to be required as part of these consultations, that the operator may not be in a position to divulge commercially sensitive information and that each party will need to ensure that such consultations do not prejudice the later planning procedures.

6. When a proposed development is likely to have a large impact in economic or environmental terms operators may find it useful to give publicity to their proposals. They may also find it useful to put their proposals on display, or to meet representatives of the community to explain the proposals, and to consider local reaction.

Environmental assessment

7. The European Community's Directive on Environmental Assessment requires the environmental effects of major projects to be taken into account before they are given development consent. It provides that developers must prepare an environ-

mental impact assessment (EIA) giving information about the environmental effects of their projects which the 'competent authority' (ie 'the authority giving development consent') must, after appropriate consultations, take into account in the decision-making process. The information to be provided includes a description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets (including the architectual and archaeologial heritage), landscape and the inter-relationship between the above factors; also a description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment. The Directive also requires bodies with relevant environmental responsibilities to be given the opportunity to comment on the project before a decision is reached and for information to be given to the public.

8. Member states are required to take measures to implement the Directive before 3 July 1988. In the United Kingdom it is proposed that where a project requiring EIA also requires planning permission, the EIA shall be provided with the planning application. The types of project to which the Directive applies are set out in Annexes I (projects for which EIAs are mandatory) and II (projects for which EIAs are to be provided where member states 'consider that their characteristics so require'). The list in Annex I is short and includes obviously major types of projects such as oil refineries, power stations, motorways and waste disposal installations. The Annex II list is much longer and includes a wide variety of projects including various minerals developments defined in paragraph 2 ('Extractive industry') of the Annex.

9. Projects listed in Annex II to the Directive will require environmental assessment when member states consider that their characteristics so require. Member states have to consider whether a project is 'likely to have significant environmental effects by virtue of its nature, size or location'. The Department is currently preparing proposals to implement this aspect of the Directive. Once the EIA Directive's requirements are in force, a mineral developer whose project requires environmental assessment will be obliged to collect information on its likely environmental effects and this information will then be taken into account by the mineral planning authority before a decision is reached on whether the scheme should proceed.

10. The Directive's requirements should already be largely met by the existing planning system as the possible impact of a project upon the environment is already a material consideration which should be taken into account by mineral planning authorities in the determination of planning applications. In addition, authorities already have powers under the GDO to require additional information in support of a planning application. The need to prepare environmental assessments should not therefore impose a major new burden on developers although it may require them to provide the information at an earlier stage and in a more ordered form than before.

Making an application

11. All applications for planning permission for development outside London and the metropolitan areas are made to the district planning authority who, within 7 days, are required to refer mineral applications to the mineral planning authority for decision. In London and the areas of the former metropolitan county councils applications are sent to, and will be determined by, the relevant London borough or metropolitan district council. Applications relating to land in the Isles of Scilly should be sent to the Council of the Isles of Scilly. In the National Parks applications should usually be sent to the district councils who will forward them to the National Park Authorities. However in the metropolitan areas of the Peak Park, applications should be sent directly to the Joint Planning Board and in Exmoor the county and district councils have agreed that applications may be sent directly to the county council.

Applications for outline planning permission

12. Applications for outline permission cannot be made in respect of the winning and working of minerals. Much ancillary development at mines or quarries will be carried out under the provisions of the GDO. Where, however a separate application has to be made for permission to erect buildings, it may be made for outline planning permission, subject to subsequent approval on matters of siting, design, external appearance, means of access or landscaping. These are termed 'reserved matters'. Applications for approval of reserved matters must be made in writing and should be accompanied by sufficient details to identify the outline planning permission and to show the proposals clearly on plans and drawings.

Content of the application

13. An application for planning permission must be made on a form obtained from the local planning authority. The completed application form must be accompanied by a plan sufficient to identify the land concerned and by any other plans, drawings and other documentation necessary to describe the development proposal. It is likely that the local planning authority will require more than one copy of each of these application documents and the application form should state the number of copies (not to exceed four) required from the applicant. Operators may wish to note that while the authority are not entitled to require more than four copies there will be occasions (eg where the application must be subject to wide consultation) when the provision of additional copies could speed up the processing of the application. Local planning authorities should recognise however that for some application mater-

ial it may be very difficult to supply as many as four copies eg copyrighted material and photographs. In such cases, which are expected to be rare, planning authorities should be prepared to accept less than four copies of such material. The checklist set out in Annex 2 suggests the range of information which will probably be necessary for a satisfactory appraisal of most mineral working proposals. The complexity of detail required by the planning authority will depend on the circumstances of the particular case. Planning authorities when seeking extra information from an applicant should observe the following guidelines:

(a) Not to request more information than is required to determine the application.

(b) Only to ask for additional information on outline applications which is needed to reach a decision on that application.

(c) When asking for additional information to give the applicant a clear and comprehensive list of questions.

(d) Not, without good reason, to ask applicants to commission expensive data collection or redesign work, especially at a late stage.

In order to avoid ambiguity and the need for the planning authority to seek extra information the applicant should describe the full extent of the proposed development included in the application. Vague possible future developments should be excluded from the application, although these can be discussed during any pre-application consultations.

Advertisement of proposed applications

14. Section 26 of the 1971 Act provides for the advertisement of certain types of development which are specified in the GDO. In order to comply with the advertising requirements of section 26 the applicant must do the following:

(a) Have a notice in the form illustrated in the GDO published at any time before the making of the application in a local newspaper circulating in the same locality as the land.

(b) If possible have a notice in the form illustrated in the GDO posted on the land for at least seven days in a period of not less than one month prior to making the application. This notice must be posted by affixing it firmly to some object on the land, and must be sited and displayed in such a way as to be easily visible and legible by members of the public without going on the land.

If the applicant has no right to have the notice posted on the land then reasonable steps must be taken to arrange if possible for the notice to be placed on the land. When the notice is posted on the land the applicant should take reasonable steps to protect it from being removed, obscured or defaced during the seven day period and should, if necessary, replace it.

(c) When making the application evidence must be provided that the notice was published in the local newpaper eg by enclosing with the application a copy of the particular page of the newspaper on which the notice appeared.

(d) Send a certificate with the planning application stating either:

(i) the notice was posted on the land and when this was done;

(ii) that it was not possible to post the notice on the land and detailing the steps that were taken in an attempt to post the notice on the land;

(iii) the notice was posted on the land but that it was left in position for less than the required seven days because despite the specified steps taken by the applicant it was removed, obscured or defaced.

The certificate must be in the most appropriate of the three forms set out in the GDO.

Both the newspaper advertisement and the site notice should name a place within the locality where a copy of the application documents can be inspected by the public for a period of at least 21 days beginning with the date of notification.

Notification to owners and others

15. Section 27 of the 1971 Act provides that a planning application must be accompanied by a certificate from the applicant stating that (a) no person other than he was the owner of any land to which the application related, or (b) he has notified all the owners, or (c) he has notified some of the owners, has tried to identify the others and has advertised the application in local newspaper, or (d) he does not know the names and addresses of any of the owners but has advertised the application. Every certificate must contain a statement either that the application does not affect an agricultural holding or that the agricultural tenant has been notified. The Act defines an owner as a person who is for the time being the estate owner in respect of the fee simple in the land or is entitled to a tenancy of the land granted or extended for a term of years certain of which not less than seven years remain unexpired. By virtue of the Town and Country Planning (Minerals) Act 1981 (the 1981 Act) notifications of applications for planning permission for development consisting of the winning and working of minerals must also be served on any person entitled to the interest in a mineral (except oil, gas, coal, gold and silver) in the land to which the application relates.

16. The 1981 Act also provides that if an application relates to the winning and working of minerals by underground operations the applicant must additionally certify that he has posted a notice of the application where it can clearly be seen by the public in at least one place in every parish or community in which is situated any part of the land to which the application relates. The forms of the certificates and notices required for the purposes of section 27 are prescribed in the GDO.

Period for representations

17. An application for permission for development of any type to which section 26 applies shall not be determined by the planning authority before the end of the period of 21 days beginning with the date of the application. When a notice must be served under the provisions of section 27 the planning authority shall not determine the application until the end of the period of 21 days beginning with the latest date on which any such notice was served. These periods of 21 days defined above for sections 26 and 27 procedures are to allow time for members of the public and persons with an interest in the land to make representations to the planning authority concerning the proposed development.

Fees for planning applications

18. Local planning authorities are required under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1983 (as amended) to charge prescribed fees for applications for planning permission. The fee should accompany the application sent to the local planning authority and, irrespective of the nature of the application, cheques and money orders in respect of the fees should be payable to that authority. The eight week period within which the application should be determined does not commence until the correct fee has been paid. The rates are revised periodically and details of the current level and scope of fees can be obtained from local planning authorities.

Period for considering applications

19. The GDO provides that a decision on a planning application should be given within eight weeks from the date the valid application is received, although the period may be extended if necessary by agreement in writing between the applicant and the local planning authority. The eight week limit applies to applications for any consent, agreement or approval required by a condition on a planning permission. Great importance is attached to the timely handling of planning applications. In general, where there are no controversial issues there should be no difficulty in reaching a decision within the specified period of eight weeks. However mineral development proposals often present controversial and sensitive issues and it must be expected that a good deal of investigation will need to precede a decision; nevertheless every effort should be made to ensure that the decision is not unduly delayed. Decisions should be postponed only when absolutely essential. Applicants can help avoid delays by ensuring that:

(a) Applications are correctly made out.

(b) The correct fee is sent with the application.

(c) The notification and advertising procedures are followed and the correct certificates accompany the application.

(d) The application fully describes the proposed development.

(e) Requests for further information from the planning authority are responded to promptly.

All parties in the planning process should recognise that promptness, relevance and efficiency are characteristics of good planning and that pre-application consultations will help produce an early decision.

Registration of planning applications.

20. The GDO requires local planning authorities to maintain a register of all planning applications made in respect of land in their area. Particulars of any decision given by them or by the Secretaries of State must also be recorded and an index must be provided. Where there is a conditional grant of permission, the conditions should also be recorded in the register of local land charges, in view of the possible need to enforce them against any subsequent owner of the land. The index should include a separate minerals subject index for applications where the proposed development consists of or includes mining operations. It is also advisable, for administrative purposes, for county planning authorities to maintain a register of mineral applications, decisions and the conditions imposed on any conditional grant of permission.

PLANNING DECISIONS: CONSULTATIONS

Introduction

21. Before reaching a decision on a planning application it is necessary for the mineral planning authority to notify or consult other interested parties and to take their views into account. The following paragraphs explain the main heads of consultation on minerals applications for which specific provision has been made and certain others which may require special attention. They do not provide an exhaustive summary and in particular cases there will be other consultations which the mineral planning authority may consider necessary, for instance with the owners or occupiers of the land or the Mineral Valuer of the Board of Inland Revenue.

Period for consultation

22. Planning authorities are required to determine planning applications within eight weeks from receipt of a valid application. Authorities should draw this to the attention of consultees when their views are being sought and should impress upon them the need to respond promptly. All consultees, whether statutory or voluntary, have a role to play and should do all they can to assist in speedy consultations.

23. Where a local planning authority is required to consult any authority or body before permission is granted for development they must allow not less

than 14 days for representations to be made. With the aim of improving the efficiency of the consultation process the National Development Control Forum have issued a code of practice that has been agreed by the Secretaries of State, the local authority associations and the bodies which local planning authorities regularly consult on planning applications. The code is non-statutory and does not override any legislative requirements. Under the code a local planning authority should provide a consultee with a copy of the appropriate application within seven days of the receipt of the complete application by the authority. Consultees are required to reply within 28 days, although the period may be extended in exceptional cicumstances. The aim is to complete the consultation procedures as early as possible within the prescribed period. If representations are not received within the 28 day period, or an agreed extended period, the decision to proceed with the application will be at the discretion of the local planning authority. This period does not apply in relation to directions referred to in paragraph 30 but the Secretaries of State for Transport and for Wales, and the highway authorities, (through the local authority associations) have however agreed to observe the spirit of the code. The code does not apply also to notifications to parish and community councils (see paragraph 25) or to occasional notification and consultations carried out on a voluntary basis by local authorities.

Consultation arrangements between local authorities

24. Before a local planning authority grants permisson for development which appears to them to be likely to affect land in the area of another local planning authority they are required under the GDO to consult that authority. Although not expressly required, a mineral planning authority should also consult an adjoining mineral planning authority on any proposal which may affect that authority's area.

25. The mineral planning authority are required under the GDO to afford the district council for the area in which the land is situated the opportunity to make representations on a planning application and to take their views into account. A district planning authority will notify the parish or community council of any planning application relating to development of land in their area which the council have expressed a wish to see and will advise them which authority will determine the application. The council may make representations to that authority within 14 days of the notification.

Mineral consultation areas

26. Consultation area procedures exist to ensure that district planning authorities who are not mineral planning authorities do not unduly sterilise important mineral resources by permitting surface development. County councils are empowered to declare mineral consultation areas by virtue of Section 86(2)(c) of the Local Government, Planning and Land Act 1980. When a district planning authority receives a planning application for any development within an area which the county have notified as one in which development would affect or be affected by the winning and working of minerals (other than coal) the district must consult the county council as mineral planning authority. The district may not determine the application until the expiration of a 28 day period from the time when they consulted the mineral planning authority, or such longer period as they may agree. Mineral consultation areas do not in themselves constitute a land use policy; there is no presumption for or against mineral development in the notified areas. However any development plan policy on the safeguarding of minerals found within such areas would be a material consideration.

27. Special procedures exist for the establishment and operation of mineral consultation areas for china and ball clay. Counties consult the district, the industry and the British Geological Survey before establishing mineral consultation areas for these minerals. If subsequently there is a disagreement between the county, the district and the industry over whether a particular non-mineral development should be permitted, the application should be referred to the Secretary of State for the Environment. In certain circumstances the development proposal may be called in by the Secretary of State for his own determination.

Safeguarded areas

28. Some types of establishment, by the nature of the activities carried on there, can constitute a hazard to any development taking place on neighbouring land or may require to be protected against the development of land in the vicinity. The Secretaries of State have made a number of 'safeguarding' directions under the GDO requiring consultation with the government department or other authority responsible for the establishment concerning any application for development within an area shown on a 'safeguarding' map. There is a general direction relating to aerodromes, the Town and Country Planning (Aerodromes) Direction 1981, issued in DOE Circular 39/81 (WO Circular 62/81). The Secretary of State for the Environment has also issued a direction in respect of development within certain inner and outer zones round the Nuffield Radio Astronomy Laboratories at Jodrell Bank. Safeguarding arrangements have been made for land close to nuclear power stations and although they are not formally prescribed in a direction the local planning authorities concerned have been requested to consult the Health and Safety Executive about any applications for the development of land within an area shown on a safeguarding map.

29. Similar considerations arise in relation to premises where hazardous materials are kept or used in significant quantities and to licensed explosives

sites. DOE Circular 9/84 (WO 17/84) sets out the arrangements under which local planning authorities are advised to consult the Health and Safety Executive about proposed development in the vicinity of such sites. For the purposes of such consultation the Executive informs the local planning authority about the hazardous installations in their areas and specifies a consultation zone around each one; in the case of licensed explosive sites the consultation distance is $2\frac{1}{2}$ times the outside safety distance specified in the licence.

Development affecting existing or proposed trunk or special roads

30. The mineral planning authority may have to notify the Secretary of State (in England, the Secretary of State for Transport; in Wales, the Secretary of State for Wales) when an application is made for development of land affecting the following highways and proposed highways,

(i) trunk roads, or

(ii) any highway which is to be comprised in the route of a special road to be provided by the Secretary of State under Part II of the Highways Act 1980 and not yet transferred to him, or

(iii) any highway which has been or is to be provided by the Secretary of State under Part II of the 1980 Act relating to trunk and special roads and not yet transferred to any other highway authority, or

(iv) any highway which the Secretary of State proposes to improve under Part II of the 1980 Act, or

(v) any highway which the Secretary of State proposes to construct or improve and of which the route is shown in the development plan, or in respect of which the Secretary of State has given notice in writing to the local planning authority, together with maps and plans sufficient to identify the route of the highway to be constructed or the length of the highway to be improved.

The mineral planning authority must notify the Secretary of State of applications received for planning permission for developments which:

(i) involve new or altered access to any part of a trunk road which is subject to a speed limit exceeding 40 miles per hour or to a special road; or

(ii) any development of land within 67 metres (or other such distance as may be specified by the Secretary of State) of:

(a) the centre lines of future trunk and special roads; or

(b) any highway which the Secretary of State proposes to improve.

The Secretary of State may give a direction to the local planning authority to refuse the grant of planning permission or to require the authority to include conditions in any permission which they may wish to grant. Applications shall not be determined unless the authority receive such a direction or have been notified that no direction will be given or that 28 days (or such longer period agreed in writing between the Secretary of State and the authority) has elapsed without receipt of such a direction or notification. If a direction is issued, the authority must give effect to its terms in dealing with the application.

31. There is an additional requirement under the GDO that where proposed development is likely to cause a material increase in the volume of traffic entering or leaving a trunk road or using a level crossing the planning authority must consult the Secretary of State and take into account any representations from him.

Local highway authorities

32. Outside Greater London, local highway authorities must be consulted in respect of development which (a) involves any means of access to a classified road (or to the adopted route of a proposed road), or (b) is likely to result in a material increase in the volume, or change in the character, of traffic entering or leaving such a road, or (c) is likely to prejudice its improvement or construction and may direct that the grant of planning permission should be restricted. The planning authority may not decide the planning application until they have received a direction or they have been notified that the highway authority do not propose to give a direction or a period of 28 days (or such longer period as may be agreed in writing with the local highway authority) has elapsed without receipt of such a direction or notification. If a direction is given, the planning authority must give effect to its terms in dealing with the application.

Access to a highway other than a trunk road

33. Where the proposed development involves the formation, laying out or alteration of any means of access to a highway which is not a trunk road and the local highway authority concerned are not the authority making the decision, the local planning authority are required under the GDO to consult that local highway authority.

Areas of coal working

34. Under the GDO local planning authorities are required to consult the British Coal Corporation (BCC) about proposals involving the erection of any permanent new buildings in an area of coal working notified by the BCC. The notified areas may extend to past, present and future workings. It may also be useful to consult British Coal's Opencast Executive in appropriate cases. The BCC are willing to advise on any development in areas where coal is being or has been worked.

Water supplies, land drainage, water and river pollution

35. Mineral workings or the disposal of mineral wastes may have an adverse effect on surface and underground waters, both as regards quality and quantity, and drainage and water courses may be silted up, polluted or otherwise affected. Tipping on the banks of streams or rivers or on their flood plains may precipitate flooding whilst the possibility of saline infiltration of aquifers or inundation by the sea when workings are on or near the coast must be considered. For these reasons mineral planning authorities should consult the relevant water authority before determining applications which consist of or include mining operations.

Agricultural land

36. Consultation requirements with the Minister of Agriculture, Fisheries and Food (MAFF) (in Wales the Secretary of State for Wales) under the GDO will be amended during 1988 to reflect national policy, which is concerned with protecting significant areas of the best and most versatile agricultural land from irreversible development. At present before a mineral planning authority grants planning permission, consultation is required where a proposed development does not accord with the provisions of the development plan and where it entails either the development of four hectares or more of agricultural land, or would entail a smaller initial loss which is likely to lead to further loss of agricultural land in the future. These size limits will be amended to require consultation on applications involving the initial or progressive loss of 20 hectares or more of Grades 1, 2 or 3A agricultural land. Irrespective of the size of the site or the land quality, the mineral planning authority is required to consult MAFF (or the Secretary of State for Wales) under Section 30A of the 1971 Act before imposing an aftercare condition which specifies an agricultural use for the restored land as to whether or not it is appropriate to specify such a use. Consultation is also required on whether the steps to be taken to achieve the desired end use should be specified in an aftercare condition or in an aftercare scheme, on the steps or scheme itself and on whether the specified steps are being taken. (DOE Circular 1/82 (WO3/82) gives further advice. More details on aftercare will be contained in a future MPG 'The Reclamation of Mineral Workings'. DOE Circular 16/87 (WO25/87) advises on the safeguarding of agricultural land, relevant procedures and technical guidance on agricultural considerations including the land classification system). It is expected that these two types of statutory consultation will cover most of the applications on which mineral planning authorities will wish to seek advice from MAFF (or the Secretary of State for Wales). In addition paragraphs 5 and 6 of Annex A to DOE Circular 16/87 (WO25/87) give guidance on non-statutory consultations which may be sought either on the initiative of the Agriculture Departments, or by the authority seeking advice on matters of technical detail.

Forestry

37. The Forestry Commission should be consulted about any application for mineral development which affects land which has been dedicated under the Forestry Act 1947. Under section 30A of the 1971 Act the mineral planning authority are required to consult the Forestry Commission before imposing an aftercare condition which specifies that the restored land should be used for forestry as to whether or not it is appropriate to specify such a use. Consultation is also required on whether the steps to be taken to achieve the desired end use should be specified in an aftercare condition or an aftercare scheme, on the steps or the scheme itself and on whether the specified steps are being taken (DOE Circular 1/82 (WO 3/82) gives further advice).

Sites of Special Scientific Interest (SSSI)

38. The Nature Conservancy Council (NCC) have a duty under section 28 of the Wildlife and Countryside Act 1981 to notify owners, occupiers, the local planning authority and the Secretaries of State of any area of land which is of special interest by reason of any of its flora, fauna or geological or physiographical features. Under the GDO mineral planning authorities are required to consult the NCC before granting permission for the development of land in an area which has been so notified. The NCC specify the operations which are likely to damage the scientific interest of the area. No operation which has been specified may be carried out without written notice being given by the owner or occupier to the NCC, and their consent obtained, a management agreement concluded or four months having elapsed. Operations granted planning permission on application are excluded from these requirements. Wetlands are particularly vulnerable to hydrological changes which may result from mineral working and development within their catchment areas, even though outside the SSSI, may have serious consequences for the designated area. In such cases, and when there is any likelihood of wildlife habitats or geological sites being affected, the NCC should be consulted. DOE Circular 27/87 (WO 52/87) sets out Government policy on development in or near SSSIs.

National Parks, Areas of Outstanding Natural Beauty and the countryside

39. Under Section 2 of the Countryside Act 1968 the Countryside Commission are required to 'keep under review all matters relating to the conservation and enhancement of the natural beauty and amenity of the countryside' and, by virtue of the National Parks and Access to the Countryside Act 1949, to give advice where any Minister or local authority consult them in connection with proposals for development in a National Park or an Area of Outstanding Natural Beauty. The Commission also have a duty under the 1949 Act to make recommendations to the Secretaries of State on proposals for development which appears to them to be inconsistent with

the maintenance of the area as a national park and on any matter relating to the countryside which the Commission see fit to take an interest in. The Commission should therefore be consulted at an early stage on major proposals for mineral development in the countryside.

Nature reserves and marine nature reserves

40. The Nature Conservancy Council (NCC) may establish National Nature Reserves on land which is owned or leased by the NCC or is being managed as a nature reserve under an agreement with the NCC or is held and managed as a nature reserve by an appointed body. Local authorities have powers to establish, in consultation with the NCC, Local Nature Reserves which are normally regulated by byelaws. All National Nature Reserves will be notified as SSSIs under the Wildlife and Countryside Act 1981.

41. Under Sections 36 and 37 of the Wildlife and Countryside Act 1981 the Secretaries of State may, at the request of the NCC, designate marine areas as marine nature reserves which the NCC manage by means of byelaws (which may inter alia prohibit or restrict activities which will interfere with the sea bed or damage or disturb any object in the reserve). The designation of a marine nature reserve does not remove the right of the mineral planning authority to grant planning permission for the extraction of minerals from the foreshore in the designated area. However the restrictions to be applied in a reserve will normally have been agreed between the NCC and interested parties before the marine nature reserve is designated. A marine reserve will not be designated, nor byelaws made, unless persons or organisations having rights or responsibilities in the area have agreed to exercise those rights and responsibilities in a manner compatible with the objects of the reserve. It will therefore be appropriate for mineral planning authorities to consult the NCC if proposals for mineral extraction are likely to have an adverse impact on a marine nature reserve.

42. Under Section 34 of the Wildlife and Countryside Act 1981 limestone pavements (areas of limestone wholly or partly exposed on the surface of the ground and fissured by natural erosion) which are notified to the local planning authority by the NCC, or the Countryside Commission, may be protected by a limestone pavement order prohibiting the removal or disturbance of limestone on or in them unless planning permission is first obtained. It will therefore also be appropriate for mineral planning authorities to consult the NCC if proposals for mineral extraction are likely to affect areas protected by a limestone pavement order.

Ancient monuments and archaeological areas

43. Mineral workings, both surface and underground, may damage or destroy structures and remains that are of importance to the national heritage. Ancient monuments, both above and below ground level, may be scheduled by the Secretaries of State under Section 1 of the Ancient Monuments and Archaeological Areas Act 1979, as amended by the National Heritage Act 1983. The fact that a monument is scheduled means that any operator intending to carry out works likely to affect it requires scheduled monument consent from the appropriate Secretary of State. Where he grants consent for operations which will destroy the monument he will normally specify conditions to ensure that satisfactory arrangements are made for full prior excavation and recording of the site.

44. Local planning authorities are generally aware of scheduled monuments and may take these into account when handling planning applications. Nevertheless, the existence of a planning permission (or any other right to do the works) does not do away with the need to have scheduled monument consent. Developers may find it helpful to hold discussions with English Heritage, or Cadw: Welsh Historic Monuments in the case of monuments in Wales, before a formal application for scheduled monument consent is made. It is also suggested that they plan their operations as far as possible in conjunction with the local archaeological unit wherever an archaeological site, even if unscheduled, is likely to be affected by a proposal for mineral working.

45. Part II of the Ancient Monuments and Archaeological Areas Act 1979 allows for the designation of 'areas of archaeological importance'. Within these areas archaeological investigating authorities appointed by the Secretaries of State are given a right of access to land subject to impending development. That right of prior access can extend for as long as six months in all from the date when a developer serves notice of his intention to disturb or cover the ground concerned, to allow investigation and excavation before the planned development can proceed. In order to enhance the co-operation between mineral operators and archaeologists Government Departments have agreed a 'Code of Practice for Mineral Operators' with the Council for British Archaeology and the Confederation of British Industry to cover all sites in England, Scotland and Wales, whether designated or not. While mining operations carried out in accordance with this Code of Practice are exempt from the statutory provisions of Part II of the Ancient Monuments and Archaeological Areas Act 1979 by virtue of the Areas of Archaeological Importance (Notification of Operators) (Exemptions) Order 1984, scheduled monuments remain outside these arrangements and the scheduled monument consent procedure of Part I of the Act will still apply. The Code of Practice, which has also been adopted by the British Coal Corporation, applies to all mineral bearing land and sets out the agreed procedure for the liaison between the minerals operator and the relevant archaeological body for the county concerned.

Listed buildings and conservation areas

46. Section 54 of the 1971 Act places a duty on the Secretaries of State to prepare lists of buildings and features of special architectural or historic interest for the guidance of local planning authorities in the performance of their planning functions. It is open to authorities, amenity societies and individuals to draw the attention of the Department to unlisted buildings and other features likely to be affected by the proposals for development which they think fall within the criteria for listing to ask for them to be added to the statutory list (see Appendix 1 to DOE Circular 8/87 and Appendix I to WO Circular 61/81). Once a building is listed, it is an offence to demolish it or alter or extend it in a way which affects its character without the consent of the local planning authority or the appropriate Secretary of State. Planning authorities are required to have regard to the effect which any development (including mineral development) for which planning permission is sought will have on listed buildings and their settings.

47. Any person who is applying for or who has obtained planning permission may apply to the appropriate Secretary of State for a certificate of immunity from listing. This states that it is not intended to list the building (or buildings) shown in the application plan. Once a certificate is issued, the building cannot be listed or be the subject of a building preservation notice made by the local planning authority for a period of five years. If the certificate is not granted, the building will be added to the statutory list.

48. Local planning authorities may designate areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance, as Conservation Areas (Section 277 of the 1971 Act). Under Section 277A the consent of the authority is needed for the demolition of all unlisted buildings in Conservation Areas apart from buildings in ecclesiastical use or those protected under the ancient monuments legislation unless they are covered by the direction given in paragraph 97 of DOE Circular 8/87 (paragraph 70 of WO Circular 61/81). Once a Conservation Area is designated, the local planning authority is required to pay special attention to the desirability of preserving or enhancing its character and appearance when exercising any of their powers under the 1971 Act.

Pipelines, sewers, power lines, pylons, railway lines and embankments

49. Mineral working may interfere with the underground installations of gas, water, drainage and electricity undertakings and industrial pipeline and government oil pipeline operators. The stability of electricity pylons, railway lines, highways and embankments both within and adjacent to the site may be affected and there may be problems if tall plant is necessary where there are overhead power lines. In all cases where these and similar services and installations, whether publicly or privately owned, are likely to be affected by proposed mineral working the appropriate statutory undertaker or other body should be advised.

50. In the case of industrial pipelines which come within the provisions of the Pipelines Act 1962 and government oil pipelines laid under Wayleave Orders made under Section 14 of the Land Powers (Defence) Act 1958 the Secretary of State for Energy under Sections 27 and 31 respectively of the 1962 Act and under Section 16 of the 1958 Act may order the removal of any building or structure constructed, or any soil, refuse or spoil deposited, without his consent, less than 10 feet from such a pipeline. There is a requirement under Section 35 of the 1962 Act for the deposit of maps with the local authorities concerned showing the route of the pipeline within their area. Where reference to these maps indicates that the proposed development is likely to come within 10 feet of such a pipeline, or to be within the vicinity and have any effect on its integrity or security, the local planning authority should notify the owner of the pipeline and the Pipelines Inspectorate of the Department of Energy. The Pipelines Inspectorate discharges responsibilities in connection with industrial pipeline safety on behalf of the Secretary of State for Energy and the Health and Safety Executive. Pipelines laid as a result of Wayleave Orders made under the 1958 Act are registered with the appropriate Register of Land Charges.

Mines and Quarries Inspectorate

51. The Mines and Quarries Inspectorate (MQI) administer the Mines and Quarries Act 1954, the Mines and Quarries (Tips) Act 1969, the Health and Safety at Work Act 1974 and their associated regulations and have a duty to enforce the law as it relates to mines and quarries. For planning applications where the safety of a mine or quarry is likely to be a relevant factor, eg the stability of the quarry face, the need for blasting or risks from overhead power lines, mineral planning authorities are advised to consult MQI at an early stage. Helpful details that should be supplied when seeking MQI advice include the proposed depth of working, the order and direction and schemes of working (particularly for deeper excavations), whether explosives are to be used, the size and siting of any proposed liquid or solid tips and other stability and safety aspects.

PLANNING PERMISSIONS: PRINCIPLES AND CONDITIONS

Introduction

52. When considerng an application for permission to work minerals, including undertaking all necessary consultations, a mineral planning authority will need to decide whether to refuse or grant permission. It may of course grant permission either with

or without conditions, although it will be very unusual for a minerals permission not to have some planning conditions attached to it. The following paragraphs explain the main issues to be considered but concentrate especially on the use of planning conditions. It will be seen that the mineral planning authority will need a detailed understanding of the applicant's intended methods and programme of working. It is advisable therefore that the mineral planning authority should discuss with the applicant the terms under which it is proposed to grant permission so as to make sure that both understand the implications of the terms and consider them practicable. This will often obviate an appeal to the Secretaries of State.

Definition of permission area

53. It is important that there should be no chance of ambiguity or confusion about the area for which permission is granted. If the area cannot be readily and accurately defined by reference to the application itself or by reference to road boundaries or Ordnance Survey plot numbers, a plan on an adequate scale (normally 1/10,000 or 1/2,500) should always be attached showing the precise land in respect of which permission is granted and suitably endorsed to show that it is the plan referred to in the permission. The permisson would be granted in some such terms as:

Permission is granted for the winning and working of minerals (specifying which minerals) by surface (underground) working in the area shown ... on the accompanying plan (subject to the following conditions) ...

54. Where it is desired to restrict the area of working this can often be better achieved by refusing permission for so much of the area as is not to be worked rather than by imposing conditions. Refusal of permission for part of the site, or the imposition of conditions restricting the area of working, is possible only where the excluded area is a very small part of the whole or where the application is made up of 'separate and divisible elements'.

Imposition of planning conditions

55. The power to impose conditions can enable many development proposals to proceed where it would otherwise be necessary to refuse permission. With regard to minerals extraction conditions serve the additional purpose of securing the environmental acceptability of proposals during and after the period of extraction. General advice on the use of conditions is given in PPG 1 and DOE/WO Circular 1/85. Conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects

56. In applying the principles of planning conditions to mineral working the economics of the industry, the topography and the geological structure of the site, the method of excavation and the buildings and equipment to be used are among the important factors to be considered. The conditions should reflect a programme of working designed to accommodate the operator's needs while at the same time paying due regard to minimising the effect on the environment both during and at the end of the mining operations. They should be soundly conceived on a long term basis. Mineral planning authorities will need to understand and assess the likely impact throughout the life of the mineral working and to establish from the outset what is required so that all parties have a clear picture of how the conditions will apply throughout the life of the development and in relation to the after-use of the land. It is desirable that conditions should be restricted to points of major importance and should avoid imposing a multitude of minor obligations to cover every conceivable contingency. The obligations or limitations on a developer should be confined to those which are related to land use and should always leave him enough scope to carry out his legitimate business without unreasonable obstruction or delay.

Powers

57. Conditions may only be imposed within the powers available. The principal powers are in sections 29 and 30 of the 1971 Act. Section 29(1) empowers a local planning authority to qualify a grant of planning permission by conditions. Section 30(1) amplifies the general power in section 29(1) in two ways. Section 30(1)(a) makes it possible to impose conditions affecting land under the control of the applicant, whether or not that land is included in his application. Conditions imposed under this provision may regulate the development or use of that land or may provide for the carrying out of works on it – for example to provide screening, to provide a means of access or to accommodate plant – but only 'so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission'. This limitation is important: the authority must be satisfied that there is a clear connection between the object of their conditions and the development to be permitted. Such conditions should not be imposed merely on the ground that the works they require may be desirable for general planning reasons and the land in question happens to be in the applicant's control. Section 30(1)(b) enables conditions to be imposed requiring the removal of any buildings or works or the discontinuance of any use of land, for which permission is granted at the end of a specified period and for the reinstatement of the land at the end of that period. The Town and Country Planning (Minerals) Regulations 1971 provide that in this context the carrying

out of mining operations is a use of land. The requirements for the reinstatement of land following mining operations should be framed with the possible future use in mind, although the conditions cannot validly regulate the use if it is one for which planning permission will subsequently be required.

Drafting

58. Particular attention must be paid to the wording of conditions; they must be expressed precisely to avoid ambiguity and any possible misinterpretation. As a condition is binding on the land it is important that the mineral operator and those with an interest in the land should know just what their obligations are. Moreover, a condition that is framed in ambiguous terms will be difficult, if not impossible, to enforce. Where a condition refers to particular areas of land, these should be precisely defined, preferably by reference to a plan in order to avoid later dispute.

Permission subject to further approval

59. In some circumstances the mineral planning authority may be prepared to grant permission before a final decision is made on certain points of detail such as, for example, methods of screening workings. Where this is so and the mineral operator can begin work to take such preliminary steps as ordering plant or equipment without a final decision on these points, conditions may be imposed requiring such details to be submitted subsequently for the approval of the authority. Authorities should bear in mind that once permission has been granted for the working of minerals over a specified area it will only be open to them to influence that development so far as it relates to matters reserved for later approval. This underlines the importance of drafting the terms of the permission carefully.

60. A planning permission should not be made subject to a condition requiring the further consent of some other person or body. Where some public authority or Ministry are affected but have no statutory powers of control over the matters in question, their views should normally have been obtained and taken into consideration in deciding the terms of the permission. It may, however, be necessary to leave points of detail to be settled after consultation with that other authority. The planning permission is not, of course, a substitute for permission required under other statutory powers of control. A condition requiring the landowner's consent should not be imposed.

Matters covered by other statutes or the common law

61. While the general power to impose conditions in section 29 of the 1971 Act is not expressly qualified, the Act itself is concerned primarily with the development and use of land and it follows that conditions which are not strictly relevant to this purpose have no place in a planning permission. Cases frequently arise in which it can be represented that the control of certain matters is not adequately provided for in more specific legislation or that the application of such legislation is less convenient or less certain than the use of planning powers. In such cases the criterion must be whether the matter is essentially one of land use; if this criterion cannot be satisfied conditions should not be imposed merely to fill the gap. Also, even though matters may be of proper concern to planning, they should not normally be dealt with by means of conditions if they are subject to control under other statutes or covered by Common Law obligations. A condition which duplicates the effect of other controls will be unnecessary and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable. For example, the provision of support for roads, railways or other property, the fencing of quarries and disused mine shafts, the maintenance of rights of way, compliance with sanitary regulations, the sinking of wells, river pollution, coast protection and access by representatives of the local planning authority are some of the matters which should normally be left to the care of existing statutory provisions or the Common Law. To seek to control such matters by attaching a condition to a planning permission is likely to invite confusion if the impact of the condition on the development permitted is different from that of the specific control and provides different penalties. Nor should conditions be imposed in order to avoid a liability to pay compensation under other legislation.

62. But sometimes good planning considerations may justify imposing conditions dealing with aspects which are at least touched on by other statutes or Common Law. For example, although the Mines and Quarries (Tips) Act 1969 is designed to secure the stability of mineral waste tips it is possible that the location of a proposed tip would present such clear risks to the public that restrictions should be attached to the planning permission or even that permission should be refused. A planning authority ought not to decline to exercise its planning powers solely on the ground that other powers are or may be made available particularly where the general interest in an individual case will be wider than the interest of the parties directly involved in it. It should also be borne in mind that the imposition of planning conditions can be a preventive measure designed to ensure that any undesirable effect of development is mitigated or forestalled, whereas alternative legislation will often be corrective, with action possible only after the event.

Enforceability

63. In imposing conditions particular attention should be paid to the possibility of enforcement. This makes it necessary to consider:

(a) the ease detecting the breach of a particular condition;

(b) whether, in the event of a breach of the conditions, enforcement action will be practicable, bearing in mind that it may involve the mineral planning authority in taking steps themselves to secure compliance with the conditions and to recover the cost from the owners of the land.

Generally speaking, if a condition can only be worded in a positive form it is likely to be difficult to enforce unless some specific act is required as part of the initial development, such as the provision of an adequate access or fencing. Even in these circumstances such a condition is best framed in a negative way by a provision that the working of the site is not commenced until after the required act has been carried out.

Monetary consideration, agreements and covenants

64. It is a general rule of law in connection with the grant of permissions or licences that no payment of money or other consideration be demanded from any person except on a clear and distinct authority laid down by statute. A condition requiring an applicant to pay or to deposit money as security for compliance with conditions is thus *ultra vires*. Moreover, a local planning authority may not seek extra-statutory rights and remedies by the expedient of requiring an operator to enter into an agreement to observe certain obligations as a condition of granting permission. However, voluntary agreements relating to the use of land may be made under the provisions of Section 52 of the 1971 Act, Section 111 of the Local Government Act 1972 or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (see DOE Circular 22/83 (WO 46/83)). Such agreements may be particularly relevant to certain mineral workings (see DOE Circular 25/85 (WO 60/85)).

65. Section 52 of the 1971 Act provides that a local planning authority may enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land. It also provides that the agreement may be enforced by the local planning authority as if they possessed the adjacent land which benefited under the agreement. The authority are therefore in the same position, in relation to the agreement as a whole, as a person entitled to the benefit of a covenant. The enforcement of the agreement by the authority will accordingly be subject to the same limitations as the enforcement at common law of other covenants. It should be borne in mind that the covenants comprised in a Section 52 agreement run with the land and will therefore be enforceable against successors in title.

66. Under Section 111 of the Local Government Act 1972 a local authority may enter into agreements which facilitate or are conducive or incidental to the discharge of any of their functions. Thus the purpose of the agreement can be wider than the purpose of agreements under Section 52 of the 1971 Act which can only restrict or regulate the development or use of land. However, a Section 111 agreement is only enforceable against the persons with whom it is made. It is not enforceable against successors in title.

67. By arrangements prescribed in Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, the enforcement of positive covenants in agreements made by a local authority under other powers (eg under Section 111) is secured against successors in title. The section also gives the local authority default powers to enter the land and do what the covenant requires. It relates only to agreements executed for the purpose of securing the carrying out of works on the land of facilitating the development of the land or of other land in which the party to the agreement has an interest.

68. There are also powers in some Local Acts enabling local authorities to obtain a bond in relation to coal mining operations but some of these are likely to have ceased to be effective at the end of 1986 by virtue of Section 262(9) of the Local Government Act 1972.

69. Agreements are particularly useful in relation to matters which have an important bearing on proposed development but which cannot be achieved by the conditions of a planning permission. Where a mineral planning authority is faced with a choice between using a planning condition or an agreement to overcome a constraint on a development proposal the authority is recommended to use the former, thereby giving the applicant an opportunity to appeal or to seek the removal or variation of the conditions in the future should circumstances warrant it. It is important to note that it may be possible to solve the problem by imposing a condition worded in a negative form, prohibiting development until a specified action has been taken, eg by a condition requiring that the development should not commence until a particular highway has been stopped up or diverted, although the reasonableness of such a requirement will depend on the likelihood of the condition being fulfilled within the limit imposed by the permission.

70. The enforcement of a legally binding agreement may be sought through the courts by way of action for damages or for specific performance.

Types of condition

71. The following paragraphs deal with the circumstances in which various conditions may be imposed. Though intended as a guide to the kind of problems which commonly arise they are by no means exhaustive, either of the types of condition, or of the considerations which may lead to the use of particular conditions.

Time limits

(a) *Commencement of Development*

72. Section 41 of the 1971 Act requires most planning permissions to be subject to a condition that the development must be begun within five years of the date on which the permission is granted or such longer or shorter period as the local planning authority may consider appropriate having regard to the provisions of the development plan and to any other material considerations. If permission is granted without such a condition then it is deemed to be granted subject to a condition that the development must be begun within five years. By virtue of Section 41(3) of the 1971 Act (as inserted by Section 6 of the 1981 Act) it is now possible for the local planning authority, in the case of mineral development, to impose an alternative condition that development must be begun within a specified period after the completion of other mineral development which is already being carried out by the applicant for the planning permission.

73. The Town and Country Planning (Minerals) Regulations 1971 provide that development consisting of mining operations shall not be taken as begun until the mining operations themselves are started. Where development is taking place on a new site and a substantial amount of plant and machinery has to be constructed, it may not be practicable for the mining operations to be begun within five years. In these circumstances the operator should suggest that an appropriate period is specified in the permission.

74. Where an outline planning permission for buildings in connection with mining operations is granted, Section 42 of the 1971 Act requires a condition to be imposed – if it is not, it is deemed to be imposed – to the effect that the application for approval of reserved matters must be made within three years of the grant of permission and the development must be started within five years of the grant of permission or within two years of the final approval of the last reserved matters to be approved, whichever is the later date. If the authority consider it appropriate on planning grounds, however, they may use longer or shorter periods than those specified in Section 42 but they must give their reasons for doing so.

(b) *Duration of Planning Permission*

75. The 1981 Act requires all planning permissions for mineral working to be subject to a time limit condition, requiring development to cease not later than the expiration of 60 years or such longer or shorter period as the mineral planning authority may specify. The period should be appropriate to the particular circumstances of the case and should take account of the legitimate needs of the operator as well as planning considerations. Permissions existing on 22 February 1982, which are not already time-limited, become time-expired on 22 February 2042. Where a permission for mineral working becomes time expired and workable deposits remain an application for its renewal should normally be granted unless there has been a material change of planning circumstances since the expiring permission was granted. Because of the long time scale of some mineral operations careful consideration should be given to the nature and long term relevance of the conditions to be attached.

Access and protection of the public highway

(a) *Access and Road Safety Considerations*

76. Where the transport of minerals causes a substantial increase in road traffic, or where it creates problems of road safety, conditions may be necessary to restrict traffic to a particular access or to require an access of a particular design which makes it impracticable to enter or leave the site except in a certain direction, so that an unsuitable stretch of road, or junction, may thereby be avoided. Also the existing access, although in a satisfactory position, may not be suitable for the type of transport to be used. Conditions requiring such improvements as the removal of obstructions to the field of view or the construction of better splays or improved roadways may then be desirable. Questions of this sort should be settled in consultation with the highway authority or the Department of Transport (in Wales, the Welsh Office) where appropriate.

77. An operator will require planning permission for the creation of any new means of access to a highway or where the proposed use of an existing access is held to constitute a material change of use, eg an existing agricultural access is widened to provide access for large scale mineral development. Where, however, planning permission has been granted for certain development and that development necessarily entails creating a new access or enlarging an existing one, then that permission may by inference include permission for the operations needed in forming or altering the access. It may also be possible to regulate the use of existing accesses to the site by the terms of the permission.

78. Many matters concerning the use of highways can be dealt with under the Highways Act or other statutes. The transport of excavated mineral material constitutes one of the heaviest types of traffic. Rural roads are sometimes inadequate for the purpose; surfaces can also be liable to break up under the strain. Section 59 of the Highways Act 1980 provides for the recovery of any extraordinary expenses which have been or will be incurred by the highway authority on maintenance due to excessive weight or extraordinary traffic. Section 278 of the Highways Act 1980 permits the highway authority to enter into agreements with others who would especially benefit from such road works, for them to contribute towards the cost of modification works and may extend to maintenance payments. Such works might include the widening of approach roads, the provision of passing places or the improvement of road junctions. Planning permission cannot properly be made conditional on such an agreement being made but such an agreement may be made conditional on planning permission being granted. Mud deposited on roads by quarry traffic may be dealt with under

the general provisions of Sections 148 and 149 of the Highways Act 1980 but, unless the roads in the immediate vicinity of a quarry can be seen to be consistently muddied, identification of the source of soiling could prove difficult. Prevention of environmental damage at source is preferable to action through the courts after the event. The imposition of a condition requiring the installation and use of wheel and perhaps body washing equipment near the site exit or the provision of concrete roads leading to the exit are alternative ways of dealing with the problem.

(b) *Lorry Routes*

79. Offers are sometimes made by mineral operators to restrict their lorries to particular routes. Such schemes have sometimes proved successful but all lorries calling at a site are unlikely to be in the control of the operator and in law a planning condition cannot control the right of passage over public highways. Some measure of control may result from a condition requiring the posting of a notice at the site exit requesting all drivers either to use or avoid particular routes. Highway authorities have powers under the Road Traffic Regulation Act 1984 to make traffic regulation orders to prevent the use of certain roads by unsuitable types of traffic eg heavy commercial vehicles. But such orders, which might restrict by weight or size, would apply to all traffic in the prohibited class irrespective of its origin or destination since it would be impracticable to distinguish vehicles visiting a particular site. If there is serious doubt whether local roads can accommodate such increase in heavy traffic as the proposed development is likely to generate, then, unless improvements are made or there is convincing evidence that control of traffic is feasible, planning permission may have to be refused.

Working programme

(a) *Hours of Working*

80. It is important to impose a condition establishing when operations should be carried out at the site. A restriction on night time and weekend working, for example, might serve to meet objections to plant and traffic noise from nearby residents. In some cases where specialist equipment is needed it might be appropriate to impose a condition requiring that the times when the equipment is used should be agreed between the mineral planning authority and the operator.

(b) *Direction of Working and Progressive Working*

81. Where a large area is to be worked over a number of years, it will often be found possible to reduce disturbance by imposing a condition requiring work to be carried out in accordance with a prearranged programme. Such a programme might divide the permission area into a number of smaller areas to be worked out and reclaimed in succession. This would enable the surface occupier to know within fairly narrow limits what his tenure would be and to plan accordingly, for example in arranging farm work. It would also ensure that extensive areas are not left unreclaimed for a lengthy period. This objective can sometimes be achieved simply by specifying the direction of working. However, a detailed prearranged programme covering a number of years could well be upset by unpredictable working difficulties, changes in the nature of the deposit and fluctuations in demand, all of which may affect the speed or method of working. In suitable cases therefore it may be preferable for conditions to specify a general phased scheme, perhaps by reference to a plan and by requiring the submission and agreement from time to time of more detailed programmes or phases of working and progressive reclamation. These could be particularly useful in operations with a lengthy time-scale such as hard rock quarrying where techniques and other factors may change in an unforeseen manner over the life of the working. It may exceptionally be necessary to require that the working of the whole site, or of one particular part of it, and, where appropriate, its restoration, shall cease by a specified date, for example when the local planning authority have arranged with the operator to use the worked-out site for some other development which it is important to begin by a certain date.

(c) *Limitation on Depth of Working*

82. It may sometimes be desirable to impose conditions which limit the depth of the excavation. Such conditions may control landscape impact, restoration and after use and the safeguarding of underground water supplies. They may also be used where it is desirable to achieve a particular land form without the importation of filling materials (in remote rural areas where filling materials may not be available). But the imposition of such conditions needs to be carefully considered bearing in mind the possibility that the consequences could be a waste of minerals, in that the resource may not be fully exploited, and/or a greater lateral area of working.

(d) *Limitation of Production*

83. The environmental impact of increases in production, particularly on traffic flow, may be great and in some circumstances the imposition of a condition limiting output at individual sites may be appropriate. However, difficulties, particularly of enforcement, may arise from the imposition of limits, especially at larger sites, where production may be subject to market fluctuations and other variables. The matter can only be considered by the mineral planning authority in the circumstances of the particular case and in consultation with the operator.

(e) *Topsoil and Subsoil Preservation*

84. Planning conditions will normally need to be imposed to require the separate stripping, storage (where necessary) and respreading of topsoil, subsoil or any other soil making materials (see forthcoming MPG 'Reclamation of Mineral Workings').

Environmental protection

(a) *Control of dust, smoke and fumes*

85. In considering an application for mineral work-

ing near residential or other development or in attractive countryside, attention must be given to the likely effects on local amenity of dust, smoke and fumes from associated processing operations and the handling of materials. Exceptionally, it may be necessary to prohibit certain types of processing, although due regard must always be paid to the demand for the product concerned and to the effect of the prohibition on the working of the site as a whole.

86. Where the statutory powers of control discussed below do not apply, or could not be applied effectively, it may be desirable to impose planning conditions requiring the adoption of recognised methods of suppression and control of dust, such as the spraying of materials with water at suitable stages in their handling and transport, the watering of those areas of the site regularly used by vehicles (to prevent the raising of dust) and the use of dust extractors. In all cases the practicability and the cost of the methods must be considered carefully and professional advice sought.

87. When considering the need to impose planning conditions it should be borne in mind that dust, smoke and fumes are subject to control under several statutes:

(a) The Health and Safety at Work etc Act 1974 provides that at prescribed premises the 'best practicable means' must be used to prevent the emission into the atmosphere of noxious or offensive substances and for rendering harmless and inoffensive any substances which may be emitted. Cement works, lime works and mineral works (defined as works in which metallurgical slags, pulverised fuel ash or minerals other than coal or moulding sand in foundries are processed) are prescribed for the purposes of the Act.* In addition these works are required to be registered under the Alkali etc Works Regulation Act 1906. A condition of registration is that the plant must be approved before work can be carried out. Enforcement of this legislation falls to Her Majesty's Inspectorate of Pollution whose headquarters are located within the Department of the Environment.

(b) Other statutes which may apply to emissions from mineral working are the Clean Air Acts 1956 and 1968 and the Public Health Act 1936. The Clean Air Acts control, in particular, the emission of smoke, grit and dust from furnaces and the emission of smoke and fumes from colliery spoil banks. Where neither of these Acts, nor the 1974 Act apply, a nuisance from mineral working may be dealt with under the Public Health Act 1936 or by action at common law. These Acts are enforced by local authority Environmental Health Departments in relation to those mineral workings which are not prescribed premises for the purposes of the 1974 Act.

* See the Health and Safety (Emissions into the Atmosphere) Regulations 1983.

88. Regulation 100 of the Road Vehicles (Construction and Use) Regulations 1986 provides for the securing of loads so that neither damage nor nuisance is likely to be caused by reason of all or part of a load being blown from the vehicle. It should therefore be unnecessary to provide by condition for the sheeting of loads to prevent dust blowing from transported material.

(b) *Noise*

89. Some mineral working processes can give rise to considerable noise and this will be a major consideration where mineral working is proposed close to dwellings or other noise-sensitive premises. Factors to consider when examining ways to reduce noise disturbance include the siting of plant in relation to dwellings, prevailing wind direction and existing screens, all of which have a bearing on noise levels.

90. DOE Circular 10/73 (WO 16/73) 'Planning and Noise' advises on the principles and specific criteria by which the Secretaries of State will be guided in taking planning decisions and on which local planning authorities should base their own policies. While local authorities (and individuals through magistrates' courts) can use the provisions of Part III of the Control of Pollution Act 1974 to control noise where it amounts to a nuisance, it is preferable for such control to be exercised from the outset through the use of appropriate conditions attached to the planning permission.

91. It is recommended that in the majority of cases a condition should be imposed stipulating the noise levels (in dBA terms) which should not be exceeded at the boundaries of the site or outside key nearby buildings. Exceptionally noisy short term operations, such as the construction and removal of earth banks and blasting, may need to be excluded or provided for separately. Advice on the prediction of noise levels from plant associated with (among other things) mineral extraction and guidance on how to reduce noise disturbance, has been published by the British Standards Institution in BS 5228:1984– 'Noise Control in Construction and Open Sites:' Part 3 (which should be read in conjunction with Part 1) is specifically about noise control applicable to surface coal extraction by opencast methods.

92. Other conditions which it may be necessary to impose include a requirement for efficient silencers to be fitted to all plant used in the site, the provision of acoustic screens or baffle banks and a restriction of hours during which plant may be operated. Moreover, a general restriction on the hours of working might serve to meet objections to traffic noise which is often a concern of residents.

(c) *Disposal of waste*

(i) Mineral wastes from the permission site.

93. Most mineral workings produce some waste and conditions controlling the way such waste is to be disposed should always be included in a planning permission. They should aim to prevent the disfigurement of the countryside, the sterilisation of unworked mineral deposits on agricultural land and

any interefernce with other natural resources, such as water supplies and fisheries or important ecological habitats. Conditions can sometimes ensure that waste is turned to a positive use. In many quarries, for example, waste can eventually be disposed of in the quarry itself and can often be used to raise the floor of the quarry to make it more suitable for some form of after-use. It may also be possible to deposit the waste in nearby excavations or hollows or use it to raise the level of other nearby land, which may be useful for the prevention of flooding. The advice of the water authority must always be sought before drawing up appropriate planning conditions. Waste may be used as bulk-fill for roads. DOE Circular 20/87 (WO 36/87) advises that highway authorities, in consultation with the mineral and local planning authorities and waste producers, should identify at the earliest opportunity whether suitable waste material is likely to be available within a radius of about 10 miles of the prospective routes of the new road. In underground mines, waste can sometimes be stowed underground in worked-out galleries, but the difficult engineering problems involved may make this impracticable.

94. If none of these alternatives is feasible, the land to be used for tipping should be carefully chosen. For reasons of cost and practicability the site will usually have to be reasonably near the workings but considerations of amenity, the current and future use of the land, the land drainage and water supply systems of the area and the need to avoid sterilising mineral reserves by badly sited waste tips are all factors which sould be taken fully into account when drawing up conditions stipulating where the waste should be tipped. Use of the evaluative framework for the assessment of alternative colliery spoil disposal options prior to the submission of a formal planning application can help identify realistic choices for tipping locations (see paragraph 47 of MPG 1 and DOE Circular 15/87 (WO 20/87)).

95. Waste tips will need to be planned and treated to ensure that they do not cause serious disfigurement of the countryside. It will be nearly always be desirable to specify by condition a maximum height for a tip. The shape of a tip is often dictated by the method of tipping and the quantity and nature of the waste to be disposed of, but it may be possible to incorporate a condition requiring the material to be spread evenly and shaped to harmonise with the contours of the surrounding landscape. What can be done will normally depend on the machinery available, the methods of working and the cost. It should be borne in mind that while high tips will encroach less on land which might be used for other purposes, it may be found that a low flat tip can more readily be converted to some other use later.

96. If tips are capable of supporting vegetation, conditions can be imposed requiring the planting of grass, shrubs or trees to help them to merge with their surroundings. The capacity of a tip to support vegetation will depend on the physical and chemical nature of the materials and on the configuration of the tip. Where a tip would not otherwise support vegetation it may be possible to impose a condition requiring it to be covered with soil or overburden, but consideration would have to be given to the availability of the covering material and the possibility of it being washed or blown away. The possible techniques and the costs of such treatment should be taken into account by the operator in drawing up proposals for working a site and by the mineral planning authority when considering what conditions to impose.

97. Tailings, the fine-particle residues from mineral processing which are generally disposed of as a slurry to tailings dams, can have considerable pollution potential, depending on the particular mineral involved and the mining processes used. The possibility of seepage, the question of safety and stability, the visual impact on the surrounding landscape and the effect on land drainage must all be taken into account when a tailings dam is proposed. Any potential water pollution will be subject to control by the water authorities who will need to be consulted at planning application stage and the imposition of any conditions suggested by them should be carefully considered. Blown dust is only occasionally a hazard in England and Wales as lagoons rarely dry out and final revegetation of lagoons and bunds normally provides an acceptable reclamation.

(ii) Safety of Mineral Waste Tips

98. The safety aspect of mineral waste tips (both solid and liquid), including their siting, drainage, design and construction, are covered by the Mines and Quarries (Tips) Act 1969 and the supporting Mines and Quarries (Tips) Regulations 1971 which give details of procedures for investigating and securing the stability of active, closed and disused tips within the meaning of the 1969 Act. The legislation contains detailed requirements and mineral planning authorities should bear these in mind when considering the need to impose planning conditions. They should be aware that detailed conditions may make it difficult for owners to meet their legal obligations. The Mines and Quarries Inspectorate administer the safety legislation in respect of active and closed tips and mineral planning authorities may wish to seek their advice before making specific conditions.

(iii) Importation of Waste

99. It is sometimes the case that the reclamation of surface mineral workings includes bringing in wastes from other sources as fill materials. If these are wastes other than wastes from a mine or quarry then their disposal on site will also require a licence under Section 5 of the Control of Pollution Act 1974 (the 1974 Act). A fundamental difference between a site licence and a planning permission is that the former is granted to a licence holder, the latter runs with the land. The basic aim of licensing is to ensure that landfilling operations entail no unacceptable risk to the environment or to public health, safety and amenity. Given that planning permission is first required for the landfill development before a

licence can be issued (in this context, a planning permission for mineral working), an application for a licence can be rejected only on the grounds of danger to public health or risk of water pollution. Consequently, licences will normally be issued with conditions attached which are intended to regulate the operation of the landfill in some detail and to ensure health and environmental quality, in particular water quality, are safeguarded. Effective operation of the planning control and site licensing systems in parallel requires close co-operation between those responsible. At present it is generally considered that licence conditions only apply during the life of the disposal site and do not give control over post-closure management (or, as may occur, after the return of a licence or abandonment of a site). The consequences of disposal of some controlled wastes can continue long after landfilling has ceased (such as gaseous emissions, discharge of polluted leachate and unanticipated settlement or ground collapse) and these effects can extend beyond the confines of the site. Effective licence conditions during the preparation and operation of a landfill can prevent many undesirable consequences. Conditions attached to the planning permission should cover aspects affecting amenity, access and general landscaping and the overall reclamation of a site.

100. Guidance on current good practice in landfilling controlled wastes is in DOE Waste Management Paper No 26 'Landfilling Wastes'. Existing advice on the relationship between planning and waste disposal legislation is also given in DOE Circular 55/76 (WO 76/76) and in DOE Waste Management Paper No 4 (although this is to be revised following the issue of Paper No 26). Consideration is also being given to the possible tightening of the law on the operation of licence conditions on waste disposal sites in the post-closure period. These new provisions, together with the role of planning conditions, will aim to remedy certain problems of control.

(iv) Protection of groundwater

101. The EEC directive on the protection of groundwater (80/68/EEC) requires:

(a) prevention of the introduction into groundwater of certain highly dangerous substances; and

(b) limitation on the introduction of certain less toxic substances so as to avoid pollution of groundwater.

In order to comply with these requirements all activities giving rise to discharges to groundwater either directly or indirectly (for example by the leaching out of these substances) must receive prior authorisation. Water authorities have been appointed the competent authorities to implement the directive. Under Part II of the Control of Pollution Act 1974 (the 1974 Act) the consent of the water authority is required for any discharge of effluent made direct to groundwater. Discharges of effluent to land, which may reach groundwater indirectly, also require consent if made from buildings or from fixed plant. However water authorities' powers of control in this area are limited; for example leachate from spoil tips is not controllable. Similarly since wastes from mines and quarries are not normally subject to the licensing control under Part 1 of the 1974 Act the water authorities will rely upon the planning authorities to ensure that appropriate conditions are attached to the planning permission for the disposal of such waste to prevent the pollution of groundwater. Under Section 18 of the 1974 Act the Secretaries of State have the powers to bring mining waste within the provisions of Part 1 of the Act on a selective basis. This would, in effect, transfer to the waste disposal authority the responsibility for the disposal of waste at a particular site. The waste disposal authority would need to consult with the water authority before setting conditions under which waste disposal would proceed and, if it decided not to implement the restrictions required by the water authority, then the matter could be referred to the appropriate Secretary of State for decision. It is anticipated, however, that any differences between a water authority and a mineral planning authority over conditions on a planning permission will be satisfactorily resolved by negotiation and that the Secretaries of State's powers under Section 18 of the 1974 Act will rarely be exercised.

(d) *Blasting*

102. Blasting often gives rise to public concern and it is desirable to impose conditions to regulate the time when blasting is to be permitted (or, in certain circumstances to prevent it altogether), to ensure adequate arrangements are made for public warning and to set limits on ground vibration and air over pressure which can be measured. Conditions prohibiting secondary blasting, or specifying the alignment of the quarry face, may also sometimes be justified.

103. The statutory responsibility for blasting rests with HM Inspectorate of Mines and Quarries. Formerly the Inspectorate was concerned rather with the safety of mine and quarry workers under the provisions of the Mines and Quarries Act 1954 and the supporting Mines (Explosive) Regulations 1959. Section 3(1) of the Health and Safety at Work etc Act 1974 extended safeguards to all persons who might be affected by mining and quarrying operations and the Inspectorate are now able to investigate all complaints about quarry blasts. Complaints are almost always about the effect of vibration on buildings or the projection of rocks through the air (flyrock). Secondary blasting, involving the reduction in size of large pieces of rock dislodged by primary blastings, is difficult to control and is a potential source of flyrock. The use of non-explosive methods, such as drop balling, is an alternative worth considering. Evidence suggests that the appropriate alignment of a quarry face may reduce the likelihood of rock being projected towards nearby dwellings, especially if blasting maps are used. Air over pressure, including noise, is obviously a factor to be considered.

104. Bearing in mind that flexible blast design is an

essential part of the overall safety of the operations and that blasting requirements will almost certainly change as the quarry develops, mineral planning authorities may find it more appropriate to set down broad conditions to be achieved, rather than resort to greater detail. They will also need to ensure that planning conditions which are designed to protect surrounding areas from ground vibration or noise from blasting do not cut across good and safe practice under the Mines and Quarries legislation. Advice from the HM Inspectorate of Mines and Quarries should always be sought before conditions to control blasting are imposed.

Buildings, fixed plant and machinery

105. Restrictive conditions attached to a planning permission can override the permission granted by the GDO for the erection, alteration or extension of buildings, plant and machinery. The unobtrusive siting of buildings, machinery and plant, or even their siting on the quarry floor, can mitigate the visual impact of the working. But the type, siting, design and construction will often be determined by the requirements of the mineral operations themselves and the power to withdraw the Order permission should be exercised only in exceptional circumstances. The freedom given by the Order should not be restricted unless there are compelling planning reasons to do so.

106. It is accepted that closer control may be needed where the working is in a National Park or other area of comparable natural beauty, where the height or siting of plant and buildings may be of considerable importance, or in the neighbourhood of an airfield, where the height of ancillary development may have safety implications. The form of the restriction will depend entirely on the circumstances and on how much is known of the future needs of the undertaking when the minerals permission is being considered. It will sometimes be possible to impose conditions at the outset regulating the type and siting of particular installations or even prohobiting their erection. But when the detailed control of these installations has to be left for consideration later, conditions can be imposed requiring permission to be applied for in respect of the erection of buildings, plant and machinery notwithstanding the provision of the Order.

107. Also, in areas such as green belts, where amenity considerations are of great importance, mineral extraction may be acceptable as a temporary activity, restricted as it is by the expected life of the working. In order, however, that any such industrial-type activity should not be excessive or prolonged, it may be necessary to impose conditions restricting such plant, machinery and buildings to use in connection with the treatment, dressing or processing of material produced only from the site.

108. It is usually desirable to require that buildings, plant and machinery needed in connection with mineral working are eventually removed, either for amenity reasons or as part of the reclamation of the site. The removal can be a difficult and expensive operation and in such circumstances should be required only where justified when considered in relation to the benefits which would be obtained, account being taken for example of any possible subsequent use of the buildings or the need to preserve buildings of special interest. The removal of buildings, plant and machinery can be achieved by conditions requiring that they be removed, say, when no longer needed in connection with the mineral working authorised by the permission; such a condition will in general relate to all plant and machinery installed after the granting of permission, whether it is specifically authorised by the permission or erected under the permission granted by the GDO.

Surface water, drainage and pollution control

109. Mineral working may lead to problems of water supply, pollution and land drainage. The use of water by an operator may diminish the flow of a river. The discharge of effluent, the removal of filtering strata and the contamination of surface or rainwater from contact with disturbed strata may lead to the pollution of rivers or underground supplies. The disturbance of land may interfere with the natural flow of springs. Drainage problems include the disposal of effluent and the disruption of field drainage systems. The deposit of waste on the washlands of a river may give rise to flooding and in certain circumstances excavation may interrupt drainage systems well beyond the limits of the worked area.

110. Where the statutory powers of control discussed below do not apply, or could not be applied effectively and, in the view of the mineral planning authority after consulting the water authority, permission for the mineral working ought not to be granted without special safeguards, it will be necessary to attach conditions to the permission indicating precisely the steps to be taken, or the activities to be prohibited, in order to safeguard water supplies. Conditions in general terms, such as those which specify that 'no interference with or pollution of local water supplies shall be permitted', would be difficult to enforce and should not be imposed.

111. There is a substantial body of legislation specifically concerned with water supply, drainage and pollution including the Water Resources Act 1963, the Water Acts of 1945, 1948 and 1973, Part II of the Control of Pollution Act 1974, the Salmon and Fresh Water Fisheries Act 1975 and the Land Drainage Act 1976 (and bye-laws made under this and earlier Drainage Acts) and the private acts of some county councils and water undertakings. The protection of water courses against pollution is the concern of the statutory water authorities set up under the Water Act 1973. A general supervision over land drainage is also exercised by the water authorities under the 1973 Act and the Land

Drainage Act 1976 but the discharge of all drainage functions other than financial is delegated to their regional drainage committees, with differing but essentially similar arrangements in the London area.

112. Pollution of underground supplies may take place as a result of the removal of filtering strata. Where this is likely it may be necessary to attach a condition that a layer of filtering material of a given minimum thickness shall be left unworked. Also, there may be some possibility of pollution of local water supplies by seepage from wet pits, particularly if unsuitable material is used for filling, and it may be necessary to impose a condition requiring that only material acceptable to the water authority shall be used for filling. Where controlled waste (as defined in the Control of Pollution Act 1974) is to be the fill material, however, the waste disposal licence will make such provision as is necessary to protect water from pollution including, if necessary, the exclusion of certain types of waste. Water authorities are consulted on all proposals to issue waste disposal licences and may refer disagreements over proposed licence conditions to the Secretaries of State.

113. The risk of silting up drainage systems by solid matter in effluent from mineral workings may be covered by the powers available to the water authority and planning control should not normally be used. But where the discharge of large quantities of water is an essential part of the mineral operations, and serious silting might otherwise take place, it will be necessary, to the extent that other legislation does not cover the matter, to impose conditions requiring the water to be passed through settling tanks or silt beds.

114. The creation of spoil heaps or the deposit of overburden on the washlands of a river can in certain circumstances cause serious drainage problems by increasing both the incidence and the duration of flooding. In certain circumstances water authorities have power to control the deposit of mine or quarry waste near rivers.

115. Under Section 24(4)(b) of the Water Resources Act 1963 mineral operators are exempted from the need to obtain a licence for the abstraction of water where this is necessary in the course of working and this exemption facilitates the common practice of temporarily pumping water from workings which are below the level of the water table in order to avoid 'wet' working. This can have a lowering effect on the water table even at a substantial distance and can adversely affect neighbouring agricultural holdings, aquifers, private wells and trees in the vicinity.

116. There is no legal remedy by which a person deprived of ground water by the legitimate activities of his neighbours can obtain redress and it is doubtful whether planning conditions could invalidate the rights implied under the 1963 Act. Where dewatering is proposed and is likely to have a seriously detrimental effect on neighbouring land, the possibility of 'wet' working, or other means of overcoming the problem, should be discussed with the operator but, if no solution can be found, planning permission may have to be refused.

Landscaping

117. Every effort should be made to maintain and protect existing trees. Section 59 of the 1971 Act makes it a duty of the local planning authority to ensure, whenever it is appropriate, that in granting permission for any development adequate provision is made, by imposing conditions, for the preservation and planting of trees. Also Section 60 of the Act empowers a local planning authority to protect trees by making tree preservation orders (TPOs) which bring under the control of the authority the felling, lopping, topping and uprooting of specified trees and woodlands. However, planning permission, granted or deemed to be granted, overrides any existing tree preservation orders on the site and enables trees to be lopped or felled without specific consent if this is necessary in order to carry out the development authorised. This does not apply where the development is permitted under the GDO. Therefore, if trees – including those covered by a TPO – are to be retained, special provision should be made by condition, to afford the trees sustenance and protection from damage, or to require their replacement if damaged.

118. Effective screening can improve the appearance of mineral workings by hiding objectional features or softening the harsh lines of buildings and conditions will usually need to be attached to ensure that the site is adequately screened. Screening may be achieved by planting trees and shrubs of appropriate native species, by the construction of earth bunds or by utilising the natural ground contours of the site. A screen may serve additional purposes by attenuating noise and reducing dust. If safety considerations can be met, a screen of rock can sometimes be left unquarried or overburden can be used in the formation of embankments at the edge of a working so as to hide it from surrounding viewpoints.

119. As much use as possible should be made of suitable existing trees since growth is slow and new trees may not prove adequate for screening purposes until many years after planting. Plans will need to be made and implemented well in advance of projected working. In other cases – if a well known landscape is affected, for example – it may be necessary to impose conditions setting out the planting scheme in greater detail and to call for specialist advice. The species to be planted should always be suitable ones which will be in harmony with the surrounding landscape. Also regular examination will be necessary to ensure that tree screens are maintained alive and that trees that die are replaced where necessary to maintain the required screening. The cost of tree planting schemes can be considerable and the specific requirements should be carefully designed for maximum effect consistent with the scale of working proposed.

Boundaries and site security

120. In general, conditions to secure the safe enclosure of quarries and mineshafts should not be imposed. Fencing and other precautions necessary in the interests of public safety are dealt with in the Mines and Quarries Act 1954, the relevant provisions of which extend to most active and disused mines and quarries. Section 165 of the Highways Act 1980 and Section 25 of the Local Government (Miscellaneous Provisions) Act 1976 also provide for the fencing of sources of danger such as excavations close to the highway or to places of public resort. The erection of fencing to protect cattle on adjoining pasture land will usually be provided for in the contractual arrangements between the farmer and his landlord or, where the farmer owns the land, between the farmer and the mineral operator. Where land is to be restored and aftercare is to be carried out it may be appropriate to attach conditions relating to the enclosure of the area to be so treated.

Restoration and aftercare

121. Among the most important conditions are those which seek to ensure that the land from which the minerals have been extracted is reclaimed at the earliest opportunity to facilitate a beneficial afteruse of the site. The 1981 Act enables mineral planning authorities to impose an aftercare condition requiring that the restored land is planted, cultivated, fertilised, watered, drained or otherwise treated for a specified period so as to bring it to a required standard for agriculture, forestry or amenity use. Detailed advice on restoration and aftercare conditions will be given in the forthcoming MPG 'The Reclamation of Mineral Workings'.

Subsidence and support

122. Where minerals are extracted by underground working there is a possibility of subsidence. Similarly the pumping of water by a mineral operator may withdraw hydrostatic support and also lead to subsidence. This may result in damage in varying degrees to the surface, land drainage, water courses, roads, railways, buildings and other surface installations. Surface mineral workings may have similar results, although on a much more limited scale. It will on occasions be necessary to consider the use of planning powers to secure support for land. Care should be taken, however, to ensure that such powers do not merely duplicate or modify the rights and liabilities already existing between surface interests and interests in underlying or adjacent minerals. Planning requirements should not for example conflict with obligations already made binding on the mineral operator by the terms, say, of a mining lease. Similarly, planning requirements should avoid needless duplication of a Common Law obligation to maintain support and so lead to the unnecessary sterilisation of valuable minerals. In each case a balance needs to be struck between the rights of surface owners to enjoy support and those of mineral operators to work the mineral in question.

123. Generally speaking the owner of the land surface enjoys a natural right under Common Law to support from adjacent or underlying strata necessary to preserve the surface intact. Any person carrying out operations likely to withdraw this support may be restrained from continuing or, if support has already been withdrawn, may be held liable for any damage caused to the land and, in most cases, to any installations and buildings on it. This broad principle has been greatly modified in detail by agreements entered into at various times between owners of the surface and persons owning or acquiring rights in the underlying minerals, whereby the natural right of support may have been surrendered altogether or replaced by an obligation to leave specified support or simply to pay compensation for damage caused. The owner of a particular stratum of minerals also has a Common Law right of support from underlying strata.* At Common Law compensation is payable for actual damage resulting from withdrawal of support, the leading authority being the judgement of Lord Macnaghten in the *West Colliery* v *Tunnicliffe & Hampson* [1908] AC 27 which states that there is no cause of action unless and until actual damage results. If the removal of other materials is prevented by subsidence which has been taking place then compensation would be payable. There is provision under Section 7 of the Mines (Working Facilities and Support) Act 1966 for a landowner to apply for restrictions on the working of minerals to secure support for building or works where it is not reasonably practicable for him to obtain this by private arrangement. Under the provisions of Section 3 and Schedule 2 to the Acquisition of Land Act 1981, the Department of Transport, local authorities, railways and statutory undertakers acquiring land for the purposes of their functions may require minerals needed for the support of the land and installations to be left unworked on payment of compensation to the mineral operator. These provisions are also applicable in respect of Department of Energy and Ministry of Defence oil pipelines.

124. The British Coal Corporation has a right to withdraw support from coal-bearing land and, under the Coal Mining (Subsidence) Act 1957 and the Coal Industry Act 1975, is generally required to make good or pay compensation for any subsidence damage. Consideration is currently being given to changing some aspects of the coal mining subsidence legislation. Details of this and other changes to the repair and compensation system are given in the Government's White Paper response to the report of the Subsidence Compensation Review Committee, published in November 1987. Section 7(1)(a) of the Atomic Energy Act 1946 empowers the Secretary of State for Energy to provide for the com-

* Vide the judgement of Lord Blackburn in *Dixon* v *White* (1883) 8 APP CAS 833.

pulsory vesting in him or in the United Kingdom Atomic Energy Authority of the right to withdraw support if this appears to him to be necessary in connection with the working of minerals required for nuclear energy. Compensation may be determined and paid in accordance with the First Schedule to the 1946 Act.

125. The existence of a legal obligation to maintain support, or of a right under the Mining Code to require support to be left, will not always be sufficient, in itself, to ensure that no subsidence takes place and there will be cases of such significance – for example, where it is clear that if subsidence does take place, the damage will be widespread and serious, or where a surface installation is so important that it would be wrong to incur any risk of damage to it – that it would be unwise to rely wholly on the existing rights and duties. In cases of this sort, where there is a major conflict between mineral development and the use of the surface above or nearby, it will be appropriate for planning powers to be used to restrict the working or even prevent it taking place at all, just as it would be right, in the converse case, to prevent the sterilising of valuable mineral deposits by surface development which could be put elsewhere.

126. When planning powers are invoked for this purpose, full consideration should be given to the circumstances of the particular development. Conditions which simply provide that support is not to be withdrawn or subsidence allowed to take place would be difficult to enforce and should not be imposed. Where the working is underground, often the only effective way of preventing subsidence will be to withhold permission to work within prescribed areas or to restrict working to a particular seam. In general, the greater the depth at which the minerals are to be worked, the more widespread will be the resulting subsidence (although it will generally be less severe) and the greater the quantity of the mineral it may be necessary to sterilise in order to protect any particular surface feature. It will be necessary to bear in mind the value of the minerals concerned and to consider whether the surface interest is important enough to justify sterilising them, having regard to other considerations such as the prospects of repairing the damage that unrestricted working may cause. Sometimes the solution may lie in prescribing a particular method of working, such as partial extraction of the mineral or the construction of packs at regular intervals underground. In other decisions it may be possible, by adjusting the rate at which particular panels are worked, to ensure that the resulting settlement of overlying strata is sufficiently even and gentle to avoid the worst strains on the surface. It will always be necessary to obtain expert advice on the practicability and efficacy of such methods and they should be discussed fully with the mineral operator before they are incorporated in planning decisions.

127. Where surface working is concerned, one option may be to require the operator to leave unworked a margin of sufficient width to ensure support for adjoining land. This may, however, lead to unnecessary sterilisation of minerals and it may be preferable to permit working nearer to the site boundary on condition that suitable precautions are carried out to maintain support for areas beyond the edge of the excavation.

128. Similar considerations may arise where it is proposed to work minerals near or under land which it is desired to preserve in a fit state for future development. Provisions for the support of such land may be justified, but wherever possible the sterilisation of minerals should be avoided. Where the working is underground, it may be possible to co-ordinate the mining programme with the progress of the surface development so that the latter can be carried out in stages at the times when settlement has finished and parts of the surface are again stable.

129. Mineral working often takes place on land adjoining highways. Support for existing highways cannot be withdrawn without a liability for damages at common law if subsidence occurs. Where the land for the highway has been bought compulsorily, the provisions of the Mining Code may apply. For this reason conditions requiring margins of land to be left unworked, or other measures to be taken, to support a highway will not normally be necessary. Sometimes there is a firm proposal for the widening of a highway or the construction of a new one and it may be necessary not only to refuse permission for mineral working in respect of the land needed for the highway works themselves, but also to provide for that land to be supported, particularly when the mineral operator owns it.

130. Apart from the need to preserve support for neighbouring land it may occasionally be necessary to impose conditions specifying the slope of the final face of an excavation in order to prevent any crumbling and slipping likely to lead to landslides and accidents or to prepare for the after-use of the site. It is also important that the conditions should be precisely drafted; a condition requiring, for example, a working face to be left at a 'natural angle of repose' is vague and could lead to difficulties if enforcement action becomes necessary. Research is currently underway within DOE to assess how best to secure the stability of quarry faces while a forthcoming MPG will provide advice on surface development on unstable land.

ANNEX 1

References

A. CIRCULARS

55/76 (WO 76/76)
Control of Pollution Act 1974 – Disposal Licences

39/81 (WO 62/81)
Safeguarding of Aerodromes etc

1/82 (WO 3/82)
Town and Country Planning (Minerals) Act 1981

22/83 (WO 46/83)
Planning Gain

9/84 (WO 17/84)
Planning Controls over Hazardous Developments

1/85 (WO 1/85)
Use of Conditions

8/87
Historic Buildings and Conservation Areas – Policy and Procedures

16/87 (WO 23/87)
Development involving Agricultural Land

27/87 (WO 52/87)
Nature Conservation

B. WHITE PAPERS

'Government Response to the Report of the Subsidence Compensation Review Committee' (Cm 235). Published in 1987.

C. OTHER PUBLICATIONS

CBI's Code of Practice for Mineral Operators
'Archaeological Investigations'. Obtainable from the CBI, Centre Point, 103 New Oxford Street, London WC1A 1DU.

British Standards Institution BS 5228 'Noise Control in Construction and Open Sites'. Published in 1984.

ANNEX 2

Checklist

A. The following checklist is suggested as a means of identifying questions to which mineral planning authorities may wish to seek answers from applicants when considering planning applications for mineral development.

B. The items in the list may be rearranged and rephrased to constitute a supplementary information form. Some items may be included in the statutory application form in areas where mineral working results in a large number of planning applications. Such inclusions will be determined locally. It is for each mineral planning authority to decide how best to seek additional information in conjunction with relevant local planning authorities.

C. Information for some of the items referred to (eg marked by *) may best be supplied by using annotated plans or diagrams. Plans should be at a scale appropriate to the size of the site and the item to be illustrated.

D. *Checklist of additional information which may be required by Mineral Planning Authorities when considering planning applications for Mineral Development*

*1. *Land and Minerals Interests*

(i) The particulars of the applicant's interest in the site.
(ii) The particulars of the applicant's interest in adjoining land.
(iii) The particulars of the interests in the application site of other parties (in the land and minerals).

2. *Nature of Development* (a full description should be given)

(i) Whether the application is for the development of a new site, extension of existing working, reopening of a disused working, the removal of material from a mineral working deposit or variation of conditions.

3. *Nature of the Deposit*

(i) The mineral to be extracted.
*(ii) The results of any exploration/prospecting work carried out, eg boreholes, trialpits, etc.
*(iii) The nature, thickness and quantities of topsoil, subsoil and overburden (including reference to soil making materials, as appropriate) mineral to be extracted, waste or non-saleable material.
(iv) The results of tests undertaken to indicate quality of deposit, eg special physical or chemical properties.
*(v) The geology and topography of the site identifying where relevant, eg land stability, water table, ground conditions including surface water drainage.

4. *Proposed Method of Extraction*

(i) Total quantity of material to be extracted (tonnes). (Saleable mineral, waste and overburden stated separately.)
(ii) Rate of production in tonnes/annum (mineral and extracted waste to be separately identified).
(iii) Proposed depth of working.
(iv) Statement of method of working including details of direction of work, phasing, duration of each of: site development works, tipping and extractive operations and restoration.
(v) Details of plant and machinery for mineral extraction (not processing).
(vi) The method of transporting material from face to processing or disposal point (eg roadway, conveyor, aerial ropeway, tramway etc).

5. *Additional Information relating to Underground Operations*

*(i) Details of the extent and impact of any subsidence/instability likely to be caused on the surface by the proposed development.

6. *Processing of the Materials*

*(i) Dimensions and type of the plant and machinery (including capacity) to be used in processing.
(ii) The tonnage of the material to be processed per annum.
(iii) Details including quantities of any other material(s) brought onto the site for processing or storage (including hazardous materials).
*(iv) A description of the nature and quantities of processed waste and the proposed method of disposal.
(v) Details of the processes or operations registerable under the Alkali etc Works Regulation Act 1906, as specified in Schedule 1 of the Health and Safety (Emissions into the Atmosphere) Regulations 1983.

7. *Ancillary Operations and Development*

*(i) Details of any other buildings, plant and structures to be erected.

8. *Transport*

*(i) Details of the transport related to removing the mineral from the site, ie train/ship/vehicles and routes.
(ii) Details of the anticipated daily number of vehicle movements generated by the operations at the site, including weight and type of vehicle.

9. *Environmental Effects of the Proposals*

*(i) Details of blasting, including times and predicted air and ground vibrational effects and noise to be recorded at site boundaries and the nearest properties.

*(ii) An indication of the proposed method of treatment and disposal of any water encountered during the works (including ground and surface water) both on and off site. If the working is to take place below the natural water table state whether the working is to be wet or pumped dry.

(iii) Details of any measures proposed for the suppression of noise and dust from the mining and quarrying operations and from the processing operation, including the treatment of any topsoil and subsoil storage heaps.

(iv) Indications of the anticipated hours of mineral working, processing and vehicular movements, expressed separately.

(v) Details of the measures proposed to clean vehicle wheels.

*(vi) Details of the measures and phasing of landscaping works proposed for screening the site.

10. *Restoration, Aftercare and After-Use*

(i) Intended after-use or uses (eg agriculture, forestry, amenity) with appropriate detail on nature and types.

(ii) Contours and intended final levels of the site.

(iii) Use of soil materials in restoration, together with intended phasing and timescale.

(iv) Amounts, types and sources of filling materials if reclamation envisages partial or complete filling with on-site or imported wastes, and the need for any licence under the 1974 Act.

(v) Details of proposed drainage of the restored land; creation of any permanent water areas.

(vi) Aftercare proposals. The details required will vary according to the intended timescale to commencement of restoration and aftercare. Where this will not take place for several years, a summary of the principle items to be included in an aftercare scheme, which will be agreed at a later date or dates. For short term workings, full details may be needed.

11. *Plans and Drawings*

In addition to the location plan and the plan of the application site, plans may be requested to show the following:

(i) The existing surface levels over the area of extraction and land in the immediate vicinity.

(ii) The general method of working, including details of direction and phasing.

(iii) The proposed levels of the worked out areas.

(iv) The proposed surface area, height and location of mineral stockpiles, topsoil, subsoil and overburden mounds.

(v) Details of the access to the site, parking, loading, unloading areas etc.

(vi) Details of landscaping and restoration including the final levels of the restored site.

(vii) Details of services crossing or adjacent to the site, eg drainage, gas or electricity supplies.

(viii) Details of any public footpaths and bridleways affected by the operations and of any proposed diversions and closures.

(ix) Details of land to remain unworked within the area of the application.

Minerals Planning Guidance Notes (MPGs) provide information and advice about planning policies, best practice and the legislation relating to minerals planning.

The Secretaries of State and their Inspectors will have regard to this guidance in dealing with development plan matters, appeals and called in planning applications and the Secretaries of State expect local planning authorities to have regard to it in the exercise of their planning functions.

MPGs aim to set out practical guidance in simpler and more accessible form than in Departmental circulars. Unless otherwise stated in the MPGs those circulars remain extant for the time being; the need to retain them will be reviewed in the light of experience with MPGs. The Secretaries of State hope that MPGs will be a useful guide to mineral operators, mineral planning authorities and to others who have an interest in the beneficial use of national resources and the quality of planning control.

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