Department of the Environment
Welsh Office

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MINERALS PLANNING GUIDANCE:

MINERALS PLANNING AND THE GENERAL DEVELOPMENT ORDER

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. MPG 2 covered planning applications for minerals development, planning permissions and the imposition of planning conditions. MPG 4 covered the review of mineral working sites, including the compensation implications. This note covers those aspects of the General Development Order which are of special relevance to minerals interests.

Contents

Introduction

1. The Town and Country Planning General Development Order 1988 (SI 1988 No 1813) (the GDO), which came into force on 5 December 1988 is one of the main pieces of subordinate legislation made under the Town and Country Planning Act 1971 (the 1971 Act). It grants permitted development rights for various specified types of development and contains a number of provisions about the making and handling of planning applications. The Order replaces the 1977 Order and subsequent amending Orders. It also incorporates the National Parks, Areas of Outstanding Natural Beauty and Conservation Areas Special Development Orders. At the same time, the Town and Country Planning (Applications) Regulations 1988 (SI 1988 No 1814) were made. These regulations govern the procedures for making planning applications and for directions by local planning authorities in respect of each application: these provisions previously formed part of Article 5 of the 1977 Order.

2. Circular 22/88 (WO 44/88) explains the main changes made by the Order and the Applications Regulations. This note gives a more detailed explanation of those parts of the GDO which are of particular relevance to minerals interests.

Mineral undertakers, owners of certain minerals and mineral and local planning authorities should note that they are required or advised to take certain new actions. The main ones are:

* *Owners of oil, gas, coal (other than alienated coal), gold and silver* should specify to *mineral planning authorities* the areas in which they wish to be notified of any application to work minerals—paragraph 4
* *local planning authorities* must keep a separate index of minerals applications. *County planning authorities* are advised to maintain a register of such applications—paragraph 7
* *mineral operators of underground mines* must deposit a plan of the 'approved' or 'authorised' site for permitted surface development within 6 months of the Order coming into force for surface development rights to continue—paragraphs 18 and 23 (*mineral planning authorities* may find it helpful to draw the attention of relevant mineral operators in their area to their requirement)
* *mineral operators* should note that remote tipping rights are withdrawn. *The British Coal Corporation (BCC)* should note that planning applications to continue remote tipping at sites which are not the subject of a scheme already approved by the mineral planning authority should be submitted within 3 months of the Order coming into force—paragraph 27
* *mineral operators* must not exceed the permitted waste tipping limits unless provided for in a scheme required and approved by the *mineral planning authority*—paragraph 28

ARTICLES OF PARTICULAR IMPORTANCE TO MINERALS INTERESTS

Bad neighbour development

3. Article 11 specifies the classes of development which must be advertised under section 26 of the 1971 Act by means of a site notice (where possible) and an advertisement in a local newspaper. Among those listed are 'the winning or working of minerals or the use of land for mineral working deposits.' All applications for such development must be accompanied by a copy of the advertisement and by the appropriate prescribed certificate (see Schedule 4 of the GDO) stating that the notice has been posted or an attempt made to do so. Full details of the procedure to be followed are given in MPG2. Authorities are reminded that development permitted by the GDO (see paragraph 11) does not need to be advertised under section 26.

Notification of mineral applications to owners of certain mineral interests

4. Article 13 requires mineral planning authorities to notify the owners of coal (except alienated coal), gas, oil, gold and silver of any applications to work any minerals in such areas as the owners have previously specified to the authority as areas in which they wish to receive such notification. This fulfills the undertaking given during the passage of section 4 of the Town and Country Planning (Minerals) Act 1981 (the 1981 Act). The owners with entitlement to notification in this respect are BCC (coal), the Secretary of State for Energy (gas and oil) and the Crown Estates Commissioners (gold and silver).

5. By virtue of section 4 of the 1981 Act, section 27 of the 1971 Act provides for owners of most minerals rights to be notified of any application for the winning and working of minerals in much the same way as owners of land are notified. Owners of the minerals now covered by Article 13 were excluded from this provision because it was felt that to include them would place other mineral operators under an unacceptable burden e.g. in some areas they would need to notify BCC of every application because of the possibility that coal was present. It was therefore agreed that owners of these minerals should be able to specify particular areas where they would like to be made aware of proposals for mineral development.

Consultation

6. The GDO requires local planning authorities to consult with various interested bodies and allow them an opportunity to comment on applications

for specified types of development before permission can be granted. Those to be consulted are set out in Articles 18–21 of the Order and include:

—BCC in respect of buildings, structures and pipelines in coal mining areas;

—the appropriate water authority in respect of all mining proposals (because of the possible effect on the water table); and

—the Secretary of State for Energy in respect of opencast coal mining.

In the case of consultations under Article 19 (consultation with county planning authority) and Article 20 (application relating to county matters), the Order provides that the consulting authority must allow a period of *at least* 14 days from the date of receipt of the application by the authority being consulted. Responses to consultation should be made as expeditiously as possible, but the provision does allow for longer periods to be agreed for a particular case or class of case—for example in areas where surface development may sterilise mineral deposits or in particularly complex and controversial minerals cases. Fuller details of the requirements relating to consultation are given in MPG2.

Register of planning applications

7. Section 34 of the 1971 Act obliges local planning authorities to keep a register of all planning applications made in their area. Article 27 of the GDO contains a number of detailed requirements. Particulars of any decision given by the authority or by the Secretaries of State must be recorded and an index must be provided which must include a separate minerals subject index for applications for development which consists of or includes mining operations or tipping of minerals waste. For administrative purposes, it is also advisable for county planning authorities to maintain a register of mineral applications, decisions and the conditions imposed on any conditional grant of permission.

SCOPE OF CONTROL

Development

8. Section 23 of the 1971 Act provides that planning permission is generally required before any development of land can be carried out. Development is defined in section 22(1) of the 1971 Act as 'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. 'Mining operations' as such receives no statutory definition but the term is defined for the purposes of the Town and Country Planning (Minerals) Regulations 1971 and in almost identical terms by the GDO as 'the winning and working of minerals in, on or under land, whether by surface or underground working.' By virtue of Section 3A of the 1971 Act, introduced by Section 1 of the 1981 Act, the definition is extended to include the removal of material from certain mineral deposits and the extraction of minerals from a disused railway embankment.

9. The extraction of minerals is substantially different from building and engineering operations. It bears more similarity to the 'use' aspect of the definition of development to the extent that it is a continuing activity, frequently over a long term and an end in itself. Although for the general purposes of the 1971 Act mining is treated as an 'operation' it is a continuing operation and each shovelful extracted from an area after the initial cut is itself a mining operation constituting a separate act of development (Thomas David (Porthcawl) Ltd v Penybont Rural District Council (1972), Court of Appeal). For the purposes of discontinuance action under S51 of the 1971 Act mining operations are deemed to constitute a 'use' of land within the relevant provisions (see MPG4). Another term often used in the context of minerals planning, 'the winning and working of minerals', is not statutorily defined but mineral planning authorities may find it useful to consider the judgements given in the cases of English Clays Lovering Pochin and Co Ltd v Plymouth Corporation (1974) and South Glamorgan County Council v Hobbs (Quarries) (1980) which indicate that 'winning and working' consists of the preparation of the ground and the extraction of minerals.

10. When considering development involving mining operations it is important to note that a limited range of developments, known as 'county matters' are specifically reserved for control by county planning authorities. The full list of 'county matters' as defined in paragraph 32 of Schedule 16 to the Local Government Act 1972, as amended by Section 86(4) of the Local Government Planning and Land Act 1980 and the Town and Country Planning (Prescription of County Matters) Regulations 1980, is set out in Annex 2.

Permitted development

11. Although the operations which constitute development for the purposes of the 1971 Act require planning permission it is not always necessary for an operator to make an application to obtain this permission. In certain cases, permissions granted under earlier legislation are sufficient, in others, Article 3 of the GDO grants a general permission for the carrying out of certain types of development which are set out in Schedule 2 to the Order. The purpose of this general permission is to provide developers with a certain amount of flexibility to carry out works which would not significantly alter the impact of their

operation on the surrounding area. The general position is considered in more detail in the following paragraphs.

Workings begun before 1 July 1948

12. Where an application was made for interim development permission and permission was granted on or after 22 July 1943 and was still in force immediately before 1 July 1948, that permission is preserved by paragraph 90 of Schedule 24 to the 1971 Act and no fresh application has been needed for the completion of the development. Earlier permissions lapsed on 1 July 1948. Where mining operations (whether surface or underground) have been carried out in any land at any time on or after 1 January 1946 and before 1 July 1948 either

(a) in conformity with an operative planning scheme under the Town and Country Planning Act 1932, or

(b) under the terms of a permission granted before 22 July 1943, or

(c) under article 4 of the Town and Country Planning (General Interim Development) Order, 1946

permission was granted by the 1948 GDO to continue the operations in adjoining land provided that a formal application was made during the period of six months from 1 July 1948 for permission to continue. As soon as the application had been finally determined the applicant was bound by the decision and if permission was granted, by any conditions or other limitations imposed. The permission under the 1948 GDO, which was carried forward to Article 3 and Class XIX.1 of Schedule 1 to the 1977 GDO, was intended as a transitional measure on the introduction of the 1947 planning regime. As mineral operators and local authorities have long been advised to submit and determine outstanding applications it is considered that Class XIX.1 is no longer necessary and its provisions have therefore been revoked.

Development ancillary to mining operations

13. Part 19 of Schedule 2 to the 1988 GDO introduces three permissions for ancillary surface development which replace and revise the rights previously covered by Class XIX.2 of the 1977 GDO. These permissions are ancillary to the mining of 'minerals' which, as defined in paragraph D2, excludes all coal other than alienated coal. The permissions do not therefore apply to BCC who have their own ancillary development rights in Part 20 (see paragraphs 21–26).

14. Class A provides a permission for a limited range of development which may be carried out *without* the prior approval of the mineral planning authority. The development may only be carried out on land used as a mine and development at underground mines will be restricted to the 'approved site' (see paragraph 18). Development under Class A must be for purposes in connection with the winning and working of minerals brought to the surface at the mine or for the treatment, storage or removal of such minerals. These processes may need to involve some material brought into the mine from elsewhere and while this is acceptable provided that the materials treated are primarily from the host mine, development for secondary industry is not permitted. There are a number of other limitations on the development permitted under this Class: these are listed in paragraph A1 (c) to (g) and include constraints on height and floorspace.

15. Class B grants permission for a wider range of development, including secondary industry, subject to the prior approval of the mineral planning authority. This permission may not be exercised unless the developer has first submitted to the authority detailed proposals covering the siting, design and external appearance of the proposed development and obtained their written approval of the proposal. Because the prior approval of the mineral planning authority is required for development under this class, there are fewer restrictions on the development which may be carried out and the permission extends to development in connection with the preparation for sale, consumption or utilisation of minerals brought to the surface of the mine as well as their treatment, storage or removal. The development permitted by this class may only be carried out on land used as a mine or on 'ancillary mining land' which is defined as 'land adjacent to and occupied together with a mine at which the winning and working of minerals is carried out in pursuance of planning permission granted or deemed to be granted under Part III of the Act'. At underground mines, development is again confined to the approved site.

16. Authorities may only refuse to approve development proposed under this Class on the grounds specified in paragraph B2 which are that:

—the proposed development would injure the amenity of the neighbourhood and modifications can reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury; or

—the proposed development ought to be, and could reasonably be, sited elsewhere.

Authorities will also wish to satisfy themselves that any refusal would be unlikely to seriously prejudice the operation of the mine. If neither of the grounds specified is appropriate but the authority nevertheless believe that the development should not proceed, it is open to them to withdraw the permission under Article 4 (see paragraphs 43–44).

17. The permissions granted by Classes A and B are both subject to a condition that the development so permitted should be removed within 24 months of the end of mining operations and that the land should be restored to its condition before the development took place. The condition may be varied with the written agreement of the mineral planning authority where, for example, a longer restoration period is required or where development may usefully be retained.

18. At an underground mine (which is defined as 'a mine at which minerals are being worked principally by underground methods') development will only be permitted under Classes A and B on an approved site as defined in paragraph D1. In the case of existing mines operating under permitted development rights the effect is to fix the area within which permitted development rights apply to land immediately adjoining an active access, which is in use for the purposes of the mine or specified associated activities on the date the order comes into force. A plan of that land must be deposited with the mineral planning authority within 6 months of the Order coming into force for permitted development rights to continue to apply. Mineral undertakers should discuss the precise details of the boundaries of the land with the mineral planning authority before depositing the plan, to minimise the scope for disputes both of fact and degree: mineral planning authorities should invite the participation of district planning authorities where appropriate. In any other case, the approved site will be the area of land identified for permitted surface development in the grant of planning permission.

19. It should be noted that the 'approved site' for existing GDO underground mines will be primarily a matter of fact as to what land is in use for the purposes of the mine and associated activities as specified in paragraphs A1(b)(i) and (ii) and B1(b)(i) to (iii) on the date the Order comes into force. However there will be an element of subjectivity in determining what land is immediately adjoining an active access, but regard should be had to existing uses and any differences should be resolved by discussion prior to the formal depositing of a plan. The purpose of the approved site is to define a sensible planning unit for the reasonable operational needs of the mine: the purpose of the plan is to ensure that the area of permitted development rights is precisely delineated. Depositing of the formal plan is the responsibility of the mineral undertaker. There is no provision for approval of the plan by the mineral planning authority, nor is there provision in the Order for subsequent amendment of the plan. It is important therefore that every effort is made to ensure that the plan accurately delineates the area of the approved site as defined in the Order. Extensions to the area can be dealt with by specific planning permission.

20. Class C introduces a new permission to enable development for the maintenance or safety of a mine or for ensuring the safety of the surface of land at or adjacent to a mine. This applies to disused mines as well as to active ones. There is no restriction on the permitted site for such works. Development may be carried out without the prior approval of the mineral planning authority in the circumstances described in C2(1). Other development will require the authority's prior approval.

BCC's permitted development rights

21. Part 20 of Schedule 2 provides permitted development rights for BCC and is intended to allow them a reasonable degree of flexibility to carry out their operations. A large proportion of their deep mine production comes from collieries that have been in operation since before the introduction of planning control. Class A grants permission for extensions to underground development at mines at which working had begun before 1 July 1948 and so perpetuates the existing use rights granted to BCC following the Town and Country Planning Act of 1947.

22. Classes B and C provide permissions for a range of surface development ancillary to the underground coal mining activities of BCC, their lessees or licensees. In accordance with the recommendations of the Stevens Committee on Planning Control over Mineral Working that BCC's ancillary development rights should be brought more closely into line with those available to other mineral operators, these Classes generally mirror the provisions of Classes A and B of Part 19 (see paragraphs 13–20). For example, GDO rights are available for ancillary development at active mines and development will only be allowed in so far as it is required for the purpose of the mine at which it takes place. If development would materially affect the external appearance of a mine or would be above a certain size, the mineral planning authority's approval is required in respect of siting and design. An additional restriction prevents the carrying out of development for the purpose of creating a new surface access to underground workings or for improving an existing access to the point where it becomes active. However, BCC's permission will continue to apply to any development 'in connection with coal industry activities' as that phrase is defined in section 63 of the Coal Industry Nationalisation Act 1946, provided it is for the purpose of the mine.

23. Development under Classes B and C may only be carried out on an 'authorised site' as defined in paragraph F2. In the case of existing mines operating under permitted development rights the effect is to fix the area within which permitted development rights apply to land immediately adjoining an active access which is in use for the purposes of the mine in connection with coal industry activities on the date the Order comes into force. However land used for the permanent

deposit of waste, and land covered by those parts of any railways, conveyors, aerial ropeways, roadways, overhead power lines or pipelines which is not adjoined by other land in use for the purposes of the mine, is excluded. A plan of the land comprising the authorised site must be deposited with the mineral planning authority within 6 months of the Order coming into force for permitted development rights to continue to apply. BCC have undertaken that in every such case they will discuss the precise boundaries of the land with the mineral planning authority before depositing a plan: the mineral planning authority should invite the participation of district planning authorities where appropriate. In any other case the authorised site will be the area of land for permitted surface development identified in the grant of planning permission.

24. It should be noted that the 'authorised site' for existing GDO mines will be primarily a matter of fact as to what land is in use for the purposes of the mine in connection with coal industry activities on the date the Order comes into force. However, there will be an element of subjectivity in determining what land is immediately adjoining an active access. The following points should be borne in mind. The purpose of the authorised site is to define a sensible planning unit for the reasonable operational needs of the mine; the purpose of the plan is to ensure that the area of permitted development rights is precisely delineated. 'Active access' is intended to include an active egress where the circumstances so dictate—for example in relation to a drift mine where the egress may be at a different location from the access. Regard should be had to existing development on the site which is in use for the purposes of the mine in connection with coal industry activities including development in progress or where plans and specifications have already been approved under Class XX(ii) of the 1977 GDO, at the time the Order comes into force. The discussions that BCC have undertaken to hold with mineral planning authorities before formally depositing a plan should ensure that any differences are resolved. Depositing of the formal plan is the responsibility of BCC. There is no provision for approval of the plan by the mineral planning authority, nor is there any specific provisions for subsequent amendment of the plan. It is important therefore that every effort is made to ensure that the plan accurately delineates the area of the authorised site as defined in the Order. Extensions to the area can be dealt with by specific planning permission.

25. Under Class D, BCC have the right to prospect for coal workable by opencast methods. Before any prospecting begins, BCC must give the mineral planning authority at least 42 days notice of their intentions explaining the nature, extent and probable duration of the operations proposed. Once prospecting has finished, any buildings, machinery or waste must be removed, boreholes sealed, excavations filled in and topsoil replaced.

26. Class E introduces a new permission to enable maintenance and safety works to be carried out at an active or disused mine. Its provisions are the same as those contained in Class C of Part 19 (see paragraph 20).

Waste Tipping

27. Part 21 of Schedule 2 consolidates and revises the tipping rights which were previously contained in Class XIX.3 and Class XX(iii) of the 1977 GDO: it grants permission for mineral operators, including BCC, to deposit waste derived from their operations on land already lawfully used for that purpose. The permission to tip is confined to premises used as a mine or on ancillary mining land already used for tipping. Only waste derived from the winning and working of minerals brought to the surface at the mine and waste derived from the treatment or preparation for sale, consumption or utilization of such minerals may be deposited under this Class. The permission does not extend to waste derived from other sources or imported from other mines. The right to tip on sites remote from a mine is withdrawn although Class B grants a permission to allow BCC to continue remote tipping under schemes which have already been approved by the mineral planning authority. For remote tipping where schemes have not been approved a transitional permission is also included to allow BCC to continue remote tipping for 3 months or until the determination of a planning application submitted within that period.

28. Paragraph A1 imposes certain limits on the height and superficial area of permitted deposits: waste deposited in an excavation must not exceed the level of the adjoining land and in any other case the superficial area or height of the deposit as at the date of the Order must not be increased by more than 10%. These limits may only be exceeded if an increase is provided for in a scheme approved by the mineral planning authority in accordance with paragraph A2. This revises and extends to all operators the condition previously applied to BCC under Class XX(iii). It enables an authority to require the developer to submit a waste management scheme making provision for the manner in which waste is to be deposited, the preliminary stripping and storage of subsoil and topsoil and, the restoration and aftercare of the site. Where a scheme has been agreed any future tipping and all other activities in relation to the deposit must be carried out in accordance with that scheme. Those aspects of a scheme relating to the manner of depositing waste and, where appropriate, the stripping and storage of soils, can apply only to waste deposited from the date on which the scheme is approved, but those aspects of a scheme which cover restoration and aftercare may apply to waste deposited from the date the Order comes into force. It is expected that mineral planning authorities will wish to request schemes in most

cases as this should enable them, through discussions with the operator, to agree acceptable tipping methods and to secure the restoration of the site. Authorities will particularly wish to consider whether schemes can be agreed to provide for progressive restoration. Authorities should note however that, once a scheme has been approved under this condition, (a 'waste management scheme') or where a scheme was approved under the condition imposed by the former Class XX(iii) (a 'relevant scheme') it may not be altered or reviewed by means of a further requirement under Part 21.

Mineral exploration

29. Part 22 of Schedule 2 provides two permissions to allow the carrying out of certain small-scale and temporary exploratory operations undertaken for the purpose of exploiting minerals. The operations permitted are the drilling of boreholes (except for oil or gas exploration), the making of other excavations, the carrying out of seismic surveys, and certain related ancillary development. Paragraph 22 of the Annex to DoE Circular 2/85 (WO 3/85) stated that it was not the Government's intention to grant permitted development rights for oil and gas exploratory drilling. When former Class XXVI was introduced it was considered that the general height limitation of 12 metres would automatically exclude oil and gas drilling rigs which are typically over 40m high. An amendment is now necessary because technological advances in the development of micro-drilling techniques have resulted in the production of oil and gas exploration rigs under 12m in height. The permissions are also not intended to cover exploration using vibroseis techniques as this is generally considered to be de minimis and unlikely to constitute development requiring planning permissions. However it is advisable that operators intending to carry out exploration by vibroseis should discuss their intentions with the mineral planning authority.

30. Class A allows the carrying out of the operations specified for a period of 28 days subject to certain specific limitation and conditions. These include a ban on operations within 50 metres of occupied homes, hospitals or schools, a 12 metre limitation on the height of equipment (reduced to 3 metres within 3 kilometres of an aerodrome) and a ban on night time working. Operations may not be carried out within a National Park, an Area of Outstanding Natural Beauty or a Site of Archaeological or Special Scientific Interest. A mineral planning authority may only withdraw this permission by making a direction under Article 4.

31. Class B permits the same operations to be carried out for the longer period of 4 months, subject to less restrictive limitations and conditions, but only if the developer gives the relevant mineral planning authority 28 days prior notification of his intentions. Within 21 days of receiving that notification, the mineral planning authority may, in certain limited circumstances, make an Article 6 direction to withdraw the permission (see paragraph 45). The permission may only be exercised in accordance with the details specified in the written notice given to the mineral planning authority unless the authority agrees otherwise in writing. It may be, for example, that the developer's notification will not specify the intended hours of working and in this case the authority may wish to agree an appropriate variation to the notification rather than make an Article 6 direction.

32. Since the permissions granted by Classes A and B are for a limited duration, they are both subject to conditions to ensure that trees are not damaged and that the land is restored as far as practicable to its former state unless otherwise agreed in writing by the mineral planning authority. The authority may decide to give such written agreement where, for example, the owner of the land wishes to retain for some other purpose a building initially erected for exploration or where the permitted operations are to be carried out in a heavily forested area and the developer cannot reasonably operate his drilling rig without some lopping of trees.

33. In addition to the permitted development rights granted by the GDO, section 280 of the 1971 Act gives local planning authorities or the Secretary of State the power to authorise entry on land to carry out surveys in connection with, amongst other things, development plan work, planning applications, the service of notices or orders, and valuations in relation to compensation claims. The section expressly confers power to search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals therein. Before searching or boring is carried out 24 hours notice must be given to the occupier of the land concerned. If the land is held by statutory undertakers or BCC and they object to the proposal on the grounds that it would be seriously detrimental to the carrying on of their undertaking, it cannot be pursued except with the authority of the appropriate Minister as defined in Section 224 of the 1971 Act, or in the case of BCC the Secretary of State for Energy. Where searching or boring is necessary to prove the extent and quality of mineral deposits which a particular mineral operator wishes to work, it may be possible for the operator himself to act as agent for the local planning authority. However, the power under Section 280 to authorise persons to enter upon land for this purpose can be exercised by the local planning authority or by the Secretary of State only in relation to their functions under the 1971 Act.

Removal of material from mineral-working deposits

34. The permissions contained in Part 23 of Schedule 2 to the Order were originally intro-

duced in 1985 to honour the undertaking given during the passage of the 1981 Act that a GDO permission would be made available for the removal of material from bona fide stockpiles and from certain small or temporary mineral-working deposits. Previously such activity was not considered to require planning permission but section 1 of the 1981 Act, which came into effect on 19 May 1986, brought the working of any material from a mineral-working deposit under full planning control (see paragraph 8). Class A therefore provides a transitional permission to allow those who had been extracting minerals from a mineral-working deposit otherwise than in breach of planning control during the 12 months before section 1 of the 1981 Act came into force to continue to do so for a 6 month period i.e. until 19 November 1986. The permission expired after that date unless within the 6 month period the developer made an application for specific planning permission to continue the development. In such cases, the GDO permission remains until the application is determined.

35. Class B contains an unconditional permission for the removal of material from any bona fide stockpile. A stockpile is defined as 'a mineral-working deposit consisting primarily of minerals which have been deposited for the purposes of their processing or sale'.

36. Class C grants permission for the removal of material from other small or temporary mineral-working deposits provided that 28 days prior written notification has been given to the mineral planning authority. Small or temporary mineral-working deposits are those covering a ground area not exceeding 2 hectares or those containing no material deposited on the land more than 5 years before the date of removal. The permission does not authorise the removal of material from any deposit derived from operations permitted by Part 6 of Schedule 2 (which provides permitted development rights for agricultural buildings and operations).

37. When notifying the mineral planning authority of their intentions operators must specify:

(a) the nature of the proposed development

(b) the exact location of the deposit

(c) the proposed means of vehicular access to the site, and

(d) the earliest date at which any material contained in the deposit was placed on the land.

The development must be carried out in accordance with the details given in the operator's notification unless the authority agree otherwise in writing. It is recommended that the notification is accompanied by a plan sufficiently detailed to indicate the site properly and that the developer provides adequate information as to the methods of operation to be employed, the proposed hours of working, the anticipated duration of the operations, the proposed access and the likely volume and duration of site traffic. Within 21 days of receiving the notification the authority may make an Article 6 direction to withdraw the permission (see paragraph 45). Mineral planning authorities may, however, prefer to agree a variation of the details in those cases where such a variation would make the development acceptable.

38. The permission in Class C is also subject to a condition which empowers the mineral planning authority to require the operator to submit for their approval a scheme for the restoration and aftercare of the site. If such a scheme is required it must be submitted to the authority within such period as the authority may specify, provided that it is not less than 3 months from the date on which the requirement was made.

Other relevant permissions

39. References to minerals or mining operations occur in parts of Schedule 2 which are not directly concerned with the winning and working of minerals. Part 6 contains permitted development rights to enable farmers to carry out a wide range of building or engineering operations on agricultural land. In the past, this permission had been abused when engineering operations, such as the creation of a reservoir, were used inappropriately for mineral extraction or waste tipping. To deal with this new controls were introduced by the Town and Country Planning General Development (Amendment) (No 2) Order 1985. These imposed conditions precluding both the removal of extracted minerals from the agricultural land and deposit of the imported waste materials. These provisions are repeated in Part 6, as is the permission, added by the 1985 Order, to allow established fish and shellfish farmers to carry out their legitimate agricultural activity even though they may have insufficient land on which to store minerals extracted in the creation of new fish ponds. The permission is only available for the creation of a limited number of new ponds on land of 2 hectares or less which is registered by the Agricultural Departments for the purpose of fish or shellfish farming under section 7 of the Diseases of Fish Act 1983.

40. Part 7 perpetuates long standing permitted development rights to carry out a wide range of building and other operations on land used for forestry purposes. The text of the consolidated Order makes it clear that these rights do not extend to engineering or mining operations.

41. Part 8 replaces Classes VIII and XXVIII of the 1977 GDO and now covers permitted development rights related to warehouse and industrial development. Ancillary development at a mine and the deposit of waste resulting from the winning and working of minerals are specifically excluded since, to comply with the recommendations of the Stevens Committee and to

avoid ambiguity, all GDO rights relating to such developments are now consolidated in Parts 19 to 21. The exclusions do not, however, apply to mine land which just happens to be leased to a non-mineral undertaker because such land would not be 'occupied together with a mine'.

Restriction of permission granted by the GDO

42. A permission granted by the GDO may not be exercised in contravention of any condition attached to a planning permission which specifically refers to its exclusion. For example, the Order permission for the erection of plant may be restricted by a siting condition attached to a permission to win and work minerals. However, in the Secretary of State's view, the freedom given by the Order should not be restricted on the grant of specific planning permission unless there are compelling planning reasons to do so. It is accepted that closer control may be needed where the working is in a National Park or other area of comparable natural beauty since in these areas the 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.

Withdrawal of permission granted by the GDO

43. A permission granted by the GDO may be withdrawn by a direction either under Article 4 or, in the case of development permitted by Class B of Part 22 or Class C of Part 23, under Article 6. Under Article 4, a local planning authority may, by issuing a direction, remove permitted development rights for any development within the classes and in the particular area specified in the direction. Directions may be either specific to a particular development proposal or may cover wider areas, such as a conservation area. The result of a direction is that planning permission must be sought for the development covered by the direction although normally no application would be necessary. A direction cannot affect development which has already been started when the direction becomes effective.

44. An authority making an Article 4 direction must either serve notice on the owners and occupiers of the land involved or, where the area covered is extensive, they may place a notice in a local newspaper. Except where the direction relates to a listed building or in special circumstances specified in Article 5, directions made under Article 4 must be approved by the Secretary of State. The Secretary of State takes the view that, since permitted development rights have been endorsed by Parliament, they should be withdrawn locally only in exceptional circumstances.

45. The permissions granted by Class B of Part 22 (mineral exploration) and Class C of Part 23 (removal of material from mineral-working deposits) are only available if the developer gives the responsible mineral planning authority 28 days prior notification of his intentions. In such cases, Article 4 does not apply. Instead an accelerated power of direction is available under Article 6 to enable the mineral planning authority to respond promptly to notification. If an authority wishes to make a direction, they must do so within 21 days of receiving the developer's notification and may only do so, in the specific circumstances set out in paragraph 2 of Article 6. A direction under Article 6 does not require the prior approval of the Secretary of State, but the authority must send him a copy of the direction as soon as it is made and the Secretary of State may disallow it at any time within 28 days of the date on which it is made. If the Secretary of State does not disallow it, the direction comes into force on the 29th day. Since Article 6 directions must be issued within 21 days, and only in certain limited circumstances, the Secretaries of State see no reason why decisions on a developer's notification should not be delegated to officers so that the developer can be advised in good time before the 28 day period elapses.

Compensation

46. If the GDO permission for any particular development is withdrawn, either by revocation or amendment of the GDO or by the issuing of a direction under Articles 4 or 6, an operator may make application for permission in the normal way. If that permission is refused, or granted subject to conditions (other than those previously imposed by the order itself), the applicant may be entitled to claim compensation under section 165 of the 1971 Act.

CROWN LANDS AND COMMONS

Crown Lands

47. Operators working minerals under lease or licence of the Crown Estates Commissioners or any other government department, or of the Duchies of Lancaster or Cornwall, are under the same obligations as other mineral operators to comply with the 1971 Act and the regulations made under it. Reference should be made to section 266 of the Act for the circumstances in which the consent of the appropriate Crown Authority is required for the exercise of powers against such lessees and licensees.

Commons

48. Where minerals are to be extracted from common land the operator should consider whether the agreement of any owners of rights of common over the land is needed. Section 193 of the Law of Property Act 1925, as amended by section 189(4) of Schedule 30 to the Local Government Act 1972, grants public rights over metropolitan commons, manorial waste or urban commons and provides that this shall be without prejudice to the right of any person to get and remove minerals or to let down the surface of the manorial waste or common. Section 194 of the 1925 Act provides that the erection of any building or fence, or the construction of any other work which prevents or impedes access to land, which was subject to rights of common on 1 January 1926, requires the consent of the Secretary of State, but any development ancillary to the winning or working of minerals is exempted from this requirement under the provisions of subsection 4. There are further provisions for the protection of various types of common. Greens are subject to a separate legal code. Any enclosure or encroachment on to a town or village green or recreation ground, when this is made other than with a view to its better enjoyment, can, under section 29 of the Commons Act 1876, be deemed to be a public nuisance and can be proceeded against upon the information of an inhabitant of the parish. Some commons are managed under statutory schemes of regulation such as schemes made under the Metropolitan Commons Act 1866–1898 or the Commons Act 1876 and 1899 and restrictions on mineral working may be involved as, for example, general digging under section 20 of the 1876 Act. Commons held by the National Trust are also protected against encroachment by special arrangements.

ANNEX 1

References

A. DOE CIRCULARS

22/88 (WO 44/88)
General Development Order Consolidation:
The Town and Country Planning General Development Order 1988
The Town and Country Planning (Application) Regulations 1988

B. LEGISLATION

Metropolitan Commons Act 1886–1898
Commons Act 1876 and 1899
Law of Property Act 1925
Coal Industry Nationalisation Act 1946
Town and Country Planning Act 1971
Town and Country Planning (Minerals) Regulations 1971
Local Government Act 1972
Local Government Planning and Land Act 1980
Town and Country Planning (Prescription of County Matters) Regulations 1980
Town and Country Planning (Minerals) Act 1981
Diseases of Fish Act 1983
The Town and Country Planning (Applications) Regulations 1988
The Town and Country Planning General Development Order 1988

C. REPORTS

Stevens Committee Report 1976 'Planning Control over Mineral Working'. HMSO (D11 750 818).

ANNEX 2

'County Matters'

(a) the winning and working of minerals in, on or under land (whether by surface or underground working) or the erection of any building, plant or machinery—

i. which it is proposed to use in connection with the winning and working of minerals or with their treatment or disposal in or on land adjoining the site of the working; or

ii. which a person engaged in mining operations proposed to use in connection with the grading, washing, grinding or crushing of minerals;

(aa) the use of land, or the erection of any building, plant or machinery on land, for the carrying out of any process for the preparation or adaptation for sale of any mineral or the manufacture of any article from a mineral where—

i. the land forms part of or adjoins a site used or proposed to be used for the winning and working of minerals; or

ii. the mineral is, or is proposed to be brought to the land from a site used, or proposed to be used, for the winning and working of minerals by means of a pipeline, conveyor belt, aerial ropeway or similar plant or machinery, or by private road, private waterway or private railway;

(b) the carrying out of searches and tests of mineral deposits or the erection of any building, plant or machinery which it is proposed to use in connection therewith;

(c) the disposal of mineral waste;

(ca) the use of land for any purpose required in connection with the transport by rail or water of aggregates (that is to say, any of the following, namely—

i. sand and gravel;

ii. crushed rocks;

iii. artificial materials of appearance similar to sand, gravel or crushed rock and manufactured or otherwise derived from iron or steel slags, pulverised fuel ash, clay or mineral waste),

or the erection of any building, plant or machinery which it is proposed to use in connection therewith;

(cb) the erection of any building, plant or machinery which it is proposed to use for the coating of roadstone or the production of concrete products or artificial aggregates where the building, plant or machinery is to be erected in or on land which forms part of or adjoins a site used or proposed to be used—

i. for the winning and working of minerals; or

ii. for any of the purposes mentioned in sub-paragraph (ca) above;

(cc) the erection of any building, plant or machinery which it is proposed to use for the manufacture of cement;

(cd) the carrying out of operations in, on, over or under land, or a use of land, where the land is or forms part of a site used or formerly used for the winning and working of minerals and where the operations or use would conflict with or prejudice compliance with any condition imposed on a planning permission requiring the restoration of the land when the winning and working of minerals has ceased.

[(d) repealed]

(e) the carrying out of operations in, on, over or under land, or any use of land, which is situated partly in and partly outside a National Park;

(f) the carrying out of any operation which is, as respects the area in question, a prescribed operation or an operation of a prescribed class or any use which is, as respects that area, a prescribed use or use of a prescribed class.

The following have also been prescribed as county matters, in England only, by the Town and Country Planning (Prescription of County Matters) Regulations 1980 (No. 2010), reg 2:

(a) the use of land or the carrying out of operations in or on land for the deposit of refuse of waste materials:

(b) the erection of any building, plant or machinery designed to be used wholly or mainly for purposes of treating, storing, processing or disposing of refuse or waste materials.