Department of the Environment
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MINERALS PLANNING GUIDANCE:

THE REVIEW OF MINERAL WORKING SITES

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. This note covers the review of mineral working sites, including the compensation implications. Circular 11/86 (WO 21/86) remains extant for the time being but the need to retain it will be reviewed. Future notes will deal with the reclamation of mineral workings and the General Development Order.

CONTENTS

Introduction

1. Unlike other forms of development, mineral working often continues for a number of years and during this time the terms of the original permission may be overtaken by changes in mining and planning practices or by an altered public perception of environmental acceptability. One of the key recommendations of the Report of the Stevens Committee on Planning Control over Mineral Working, published in 1976, was that mineral permissions should be examined periodically and modified, where necessary, to bring them up to date. The Committee also recommended that, because of the special characteristics of mineral extraction, the minerals industry should accept reasonable additional costs arising from the modernisation of old mineral planning permissions. The Town and Country Planning (Minerals) Act 1981 (the 1981 Act) puts this recommendation into effect by providing for a statutory review of mineral working sites, for the amendment of existing mineral permissions and for the abatement of the compensation payable as a consequence of such amendments.

2. In carrying out their reviews and assessing what action should be taken, mineral planning authorities should bear in mind the need, as in all planning matters, to consider each case on its merits having regard to all material considerations. Much can be achieved by constructive negotiation with the operator without recourse to the statutory powers that are available. Nevertheless, the opportunity for change introduced by the 1981 Act provides a framework within which mineral planning authorities and the industry can work together to ensure that so far as possible existing mineral operations continue to adapt to meet the standards of the day. The Government believe that if problems are approached constructively and positively by all parties the effective operation of these new powers will, with co-operation between the local authorities and industry, offer the prospect over time of significant improvements to the environment.

THE REVIEW OF MINERAL WORKING SITES

3. Section 3 of the 1981 Act inserted section 264A into the Town and Country Planning Act 1971 (the 1971 Act). This section imposes a duty on mineral planning authorities to undertake at such intervals as they consider fit reviews of mineral working sites in their area and to make in respect of these sites such orders under sections 45, 51, 51A or 51B of the 1971 Act as they consider appropriate. These orders enable planning authorities to revoke or modify permissions and thus raise environmental standards. In areas covered by Urban Development Corporations the duty to review sites, and the power to make orders consequent upon such a review, rests with the county or district council as appropriate.

4. Reviews must cover:

- every site (including any not covered by specific planning permission) where the winning and working of minerals is being carried out or has been carried out during the 5 years preceding the commencement of the review; and
- every site which is authorised by planning permission but where working has not yet begun,

but authorities may include other sites in their review if they wish to. There is no statutory requirement as to the timing, frequency and manner of conducting the review: each authority is free to decide such matters in the light of its own particular circumstances. Authorities are however advised to formally fix the date of the beginning of the review as the review sites are identified by reference to this date (cf Section 264A of the 1971 Act).

5. The purpose of the review is to monitor all recently active sites or sites authorised but not yet started to ensure, where practicable, that conditions are consistent with current minerals planning practice. An individual authority's approach will be influenced by the history of mineral exploitation and the number and circumstances of mineral working sites. But in all areas an important first step will be to draw up a list of the sites to be included in the review and to establish the planning status and the problems of those sites. The authority will then want to establish priorities for action: sites may be tackled according to their geographical area, the mineral extracted or the nature and scale of the planning problems which they create. Ideally, sites with the most serious problems should be tackled first but it is appreciated that other factors may frequently result in altered priorities. The legislation requires mineral planning authorities to make orders where appropriate. However, the solution to the planning problems may not always be a formal order. Other measures, such as agreements, enforcement action or a new planning permission, may be more appropriate. The final decision on what action to take remains with the mineral planning authority. The County Planning Officers' Society report 'The Review of Mineral Working Sites' gives further guidance.

Consultation

6. Before embarking on a review, mineral planning authorities should alert mineral operators and landowners to the timing of its commencement and purpose by whatever means of publicity they consider appropriate. The provisions of section 264A of the 1971 Act do not require consultations to be carried out in the same way as for planning applications but mineral planning authorities should bear in mind the importance of consulting mineral operators and landowners and, in the shire counties, the relevant district council as well as other appropriate bodies such as the Water Authority, Mines and Quarries Inspectorate, Ministry of Agriculture, Fisheries and Food (in Wales, the Welsh Office Agriculture Department) and the highway authority. Such consultations will be helpful in identifying the right solution in any individual case and the most efficient way of achieving it in a manner acceptable to all parties.

ORDER MAKING POWERS AVAILABLE

Revocation and modification orders

7. Under section 45 of the 1971 Act, a planning permission to win and work minerals may be revoked or modified by the mineral planning authority if they consider that it is expedient to do so 'having regard to the development plan and to any other material considerations.' Section 8 of the 1981 Act adds a provision to enable the mineral planning authority to include an aftercare condition in a section 45 order provided it also includes, or the planning permission already contains, a restoration condition. All the provisions for aftercare in Section 30A of the 1971 Act will apply. Guidance on aftercare conditions will be given in the MPG on the reclamation of mineral workings. Section 45 orders may only be made before buildings or operations have been completed or a change of use has occurred. In the case of mineral workings, an order can only be made before development commences or in respect of uncompleted parts of the development. For example aftercare conditions must be imposed before soils have been replaced and restoration conditions satisfied.

8. Mineral planning authorities are required to serve notice of a section 45 order on the owners and occupiers of the land affected and on any other person who, in their opinion, would be affected by the order. The notice must specify a period (not less than 28 days from the date of service) during which anyone served with a notice may request that their representations be heard by a person appointed by the Secretary of State before the order is confirmed. This may be by means of a local inquiry or written representations. However, section 46 of the 1971 Act provides for an expedited procedure where all those who received notice of the order have informed the authority that they do not wish to object to it. In such cases a section 45 order may take effect without being confirmed by the Secretary of State provided that the authority have:

- advertised the making of the order;
- sent a copy of the advertisement to the Secretary of State not more than 3 days after it is published;

and the Secretary of State has not

- directed that the order be submitted to him for confirmation; or
- received notice that a person affected by the order wishes to object.

The provisions of section 46 do not apply where an order has been submitted to the Secretary of State for confirmation, where the order revokes or modifies a planning permission granted or deemed to have been granted by the Secretary of State or where an order modifies conditions imposed by virtue of sections 41 or 42 of the 1971 Act (which relate to time limits on the commencement of development — see paragraphs 72 to 74 of MPG 2).

9. There will be cases where a site is subject to more than one planning permission and the authority will need to decide whether to make an order under section 45 for each permission or to make a single comprehensive order under section 51. In such cases, the authority should consider which option will best achieve their planning objectives for the site. However, it is expected that a comprehensive amending order under section 51 will usually be more effective than a series of section 45 orders tackling individual permissions.

Discontinuance orders

10. Where the mineral planning authority consider it 'expedient in the interests of the proper planning of their area (including the interests of amenity), regard being had to the development plan and to any other material considerations', they may, under section 51 of the 1971 Act, make an order requiring any use of land to be discontinued, or they may impose conditions as to its continuing use or require buildings or works to be altered or removed. As a result of amendments made by section 9 of the 1981 Act, the winning and working of minerals is treated as a use of land for the purposes of section 51. The mineral planning authority can include in section 51 orders requirements for the alteration or removal of plant or machinery and conditions relating to the restoration of the land. If the order imposes restoration conditions, or the site is already subject to such conditions, aftercare conditions may also be imposed. Whereas section 45 orders can only be used where there is an express planning permission, section 51 orders relate to the use of land. Authorities may therefore wish to consider making a section 51 order where:

(a) mining operations were begun before the Town and Country Planning Act 1947 came into effect and no express planning permission exists,

(b) mining operations began in breach of planning control but enforcement action is not appropriate, or

(c) the making of an order under section 51 represents the most efficient method of modifying the use (eg ensuring the restoration) of a large site which is subject to more than one planning permission. (In a case of this kind, the operator may be prepared to make an application for a consolidated permission and such an application would be exempt from the normal fee.)

11. Orders under section 51 take effect only if confirmed by the Secretary of State and he may modify an order as he considers necessary. When an authority submits an order for confirmation, they must serve notice on the owners and occupiers of the land affected and on any other person who, in their opinion, will be affected by the order. Anyone served with such a notice has the right to be heard by a person appointed by the Secretary of State. This may be by means of a local inquiry or by written representations. There is no expedited procedure for unopposed orders under this section.

Prohibition orders

12. Section 10 of the 1981 Act introduced section 51A of the 1971 Act which enables mineral

planning authorities to make orders prohibiting the resumption of mineral working in, on or under land where no such working has been carried out to any substantial extent for a period of at least 2 years and where, on the evidence available to the authority, it appears that working is unlikely to resume. The intention of section 51A orders is to establish without doubt that mineral operations have ceased, to ensure that working cannot resume without a fresh grant of planning permission and to secure the restoration of the land. It is expected that mineral planning authorities will wish to use this power to resolve the status of inactive workings and to require the restoration or tidying up of old sites. This may be of particular assistance on sites which have been operated under permissions which do not require progressive restoration.

13. In addition to prohibiting the resumption of development, orders under section 51A may impose requirements for:

(a) the removal or alteration of plant and machinery,

(b) the removal or alleviation of any injury to amenity caused by the mineral workings (except where caused by subsidence from underground workings),

(c) compliance with any planning conditions to which the mineral workings are subject, and

(d) the restoration of the land.

Where a restoration condition is imposed by the order, or the site is already subject to one, an aftercare condition may also be imposed subject to the requirements of section 30A of the 1971 Act.

14. Whether or not it can be held that no working has been carried out 'to any substantial extent' will depend on the circumstances of the individual case, including the scale of the operation and past levels of production. In deciding whether or not the resumption of working is unlikely, mineral planning authorities should weigh evidence supplied by the operators/owners on the pattern and programme of their operations including forecasts of trends in production and markets for their products. In the event of an inquiry, it is likely that authorities will need to be able to demonstrate that their decision to make an order is a reasonable one in the light of such issues and other relevant information.

15. Prohibition orders can only take effect if confirmed by the Secretary of State and he may confirm them without modification or subject to such modifications as he considers expedient. The procedural arrangements are similar to those for section 51 orders. When a prohibition order takes effect, any planning permission to which the order relates will cease. This provision does not prevent the authority making a further grant of planning permission for mineral working on the site if they decide to revoke the prohibition order. Such revocation must be by order, but does not require confirmation by the Secretary of State. However, a planning permission which is terminated by a prohibition order would not be reinstated automatically if the order was revoked. Fresh planning permission would be required to enable mineral working to be resumed. (When a prohibition order is revoked it ceases to be a charge under the Local Land Charges Rules 1977. Under rule 8 the registering authority are responsible for cancelling the registration).

Suspension orders

16. Where a mineral planning authority have reason to believe that an operator intends to resume working in the foreseeable future, it would clearly be inappropriate for them to make a section 51A order prohibiting future mineral working. Section 51B of the 1971 Act (introduced by section 10 of the 1981 Act) therefore enables mineral planning authorities to make suspension orders in respect of a site where mineral working has taken place but has been temporarily suspended. A mineral planning authority may assume that mineral working has been temporarily suspended when it has not been carried out 'to any substantial extent for at least 12 months but it appears to them that a resumption of operations is likely'.

17. The aim of section 51B orders is to deal with environmental problems arising at sites where operations have been temporarily suspended: they may be regarded as a holding measure pending a resumption of working or the making of an order under section 51A. The orders may not include restoration or aftercare conditions but may require that steps be taken for the protection of the environment including measures to preserve the amenities of the area in which the land is situated, to protect it from damage or to prevent deterioration in the condition of the land while operations are suspended. Requirements which may be appropriate include the removal where practicable of plant or equipment, the disposal of stockpiles and waste heaps and the tidying up and maintenance of the site. Fencing and other safety measures may also be appropriate, if it is found that existing powers under the Public Health Acts and Mines and Quarries Act are inadequate to deal with a particular situation. The order should include a time limit for compliance with any steps required but, since some can be carried out relatively quickly and others may take longer to arrange, provision is made for a mineral planning authority to specify different time limits for different steps.

18. A suspension order is a temporary measure and there is provision for a mineral planning authority to take account of changing circumstances after a suspension order has come into force by making a supplementary suspension order. For example, if the resumption of mineral workings is postponed for a further period, perhaps because of changing market conditions, then a supplementary suspension order securing the site for a further period may be appropriate. Such an order may direct the operator to take additional or alternative steps to protect the environment from those specified in the original suspension order. Where mineral working has resumed sooner than had been anticipated, a supplementary suspension order can be used to direct that the suspension order should cease to have effect.

19. Before they can take effect, suspension orders and supplementary suspension orders must be confirmed, with or without modification, by the Sec-

retary of State. Such confirmation requirements do not apply to supplementary suspension orders which simply revoke a suspension order or previous supplementary suspension order. The procedural arrangements are similar to those for section 51 orders.

20. Under section 51E of the 1971 Act, mineral planning authorities have a duty to review suspension orders and supplementary suspension orders at intervals of not more than 5 years and to determine whether a prohibition order under section 51A or a (further) supplementary suspension order should be made. This is to ensure that a suspension order does not remain in force indefinitely without the mineral planning authority considering what other action to take. It is important to remember that section 51B orders do not and cannot prevent the re-commencement of working. If, however, an operator wishes to re-commence working land which is the subject of an order, he must notify the mineral planning authority of the intended date of re-commencement and the authority must revoke the order within 2 months of that date if working has resumed to a substantial extent. If they do not revoke the order, the operator may apply to the Secretary of State for its revocation and either the operator or the mineral planning authority may request a hearing prior to the decision being made.

Choice of order

21. Mineral planning authorities should bear in mind that certain principles apply to the making of orders under Part III of the 1971 Act. In making an order they should have regard to the development plan and any other material considerations. The selection of the appropriate order will depend on the circumstances of the individual case and the working status of the site. A section 45 order revokes or modifies a planning permission and may only be made before the development commences or in respect of any part of a permission which is not completed. A section 51 order, however, relates to the use of land and may be used to discontinue a use of land, to regularise or impose conditions on the continuance of an authorised use or to grant permission for an alternative development of the land. In considering whether to confirm an order, the Secretary of State will be concerned with its effectiveness in promoting its planning objectives in relation to the site. Each case will need to be considered on its planning merits. The basis for an order must therefore be defensible and mineral planning authorities should be able to justify the application of the order to the area of the site which is affected. Detailed guidance on the choice of order can be found in the CPOS report 'The Review of Mineral Working Sites'. Orders may be used to deal with any mineral sites in an authority's area whether or not the authority has a statutory duty to review them.

22. Under section 245 of the 1971 Act, any person who is aggrieved by an order under sections 45, 51, 51A or 51B on the grounds that it is not within the powers of the Act or that a procedural requirement has not been complied with may appeal to the High Court.

COMPENSATION FOLLOWING ORDERS

Introduction

23. Under section 33 of the 1971 Act 'any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein'. Consequently, any authority imposing a restriction on an extant permission or use of land by means of an order under Part III of the 1971 Act automatically incurs a liability under Part IV to pay full compensation for any loss or damage arising from that order. Mineral development is subject to the same general rule, but because it can last so much longer than other forms of development, the terms of the original permissions are more likely to be overtaken by changing circumstances. The 1981 Act therefore provided for regulations to be made to modify the compensation provisions of the 1971 Act insofar as they apply to mineral working. However, compensation may only be modified where 'mineral compensation requirements' are satisfied. The circumstances in which such requirements are satisfied vary for the different types of order: details are explained in Annex 2. In all other cases the liability to pay full compensation remains.

24. The Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985 (the compensation regulations) contain the detailed provisions for the modification of compensation. Where 'mineral compensation requirements' are satisfied they:

(a) modify the basis of compensation payable under section 164 of the 1971 Act in relation to an order under section 45 and under section 170 in relation to orders made under sections 51, 51A or 51B,

(b) bring the basis for assessing compensation under section 170 into line with that for section 164 so that compensation is payable in respect of expenditure incurred in carrying out work rendered abortive by the order and loss or damage directly attributable to the provisions of the order.

(c) provide for expenditure on works to remove or alleviate injury to amenity caused by mineral working, or to restore the land after the extraction of minerals, to be treated as loss or damage qualifying for compensation. But for this to be the case the works must have been carried out under a written voluntary agreement entered into since the regulations came into operation but before the order takes effect, and

(d) provide for the amount of compensation that would be payable under sections 164 or 170 to be reduced:

- by a prescribed sum for sections 51A or 51B orders;
- in the case of section 45 and section 51 orders, by a prescribed percentage of the notional value of the right to win and work the mineral in the land to which the order relates subject to upper and lower limits.

25. While the order making powers apply to development by the British Coal Corporation (BCC) in the same way as for development by other mineral operators the compensation regulations do not. Where orders are made which would revoke or modify planning permission (including the withdrawal of permitted development rights in consequence of an Article 4 direction) for the development of BCC's 'specified land' compensation is assessed in accordance with Part XI of the 1971 Act as applied and modified by the Town and Country Planning (National Coal Board) Regulations 1974 without abatement.

Revocation and modification orders

26. If planning permission is revoked or modified by an order under section 45, a person with an interest in the land or in the minerals in, on or under it, may claim compensation under Section 164 of the 1971 Act for expenditure incurred in carrying out work which is rendered abortive or any other loss or damage directly attributable to the order including any depreciation in the value of the interest in the land.

27. Mineral compensation requirements (See Annex 2) would not be satisfied where planning permission is revoked because the order would restrict the right to win and work minerals rather than modify the permission. However, in the case of a modification order where mineral compensation requirements are satisfied, compensation will be abated in the manner prescribed in the compensation regulations (see paragraph 32).

Discontinuance orders

28. Where an order is made under section 51 of the 1971 Act discontinuing or imposing conditions on the use of land for mineral working, compensation may be payable under section 170 of the 1971 Act. A person with an interest in the land or in the minerals in, on or under it may claim compensation for damage suffered in consequence of the order by depreciation of the value of his interest or by being disturbed in his enjoyment of the land or of the minerals. Compensation may also be claimed in respect of any expenses reasonably incurred in carrying out any works to comply with the order.

29. However section 170B of the 1971 Act and the compensation regulations provide that, where mineral compensation requirements are satisfied, the basis for assessing compensation under section 170 is brought into line with section 164 of the 1971 Act so that compensation is instead payable on the same basis as outlined in paragraph 26.

30. In the case of orders which discontinue mineral extraction, mineral compensation requirements (see Annex 2) would not be satisfied because such orders would impose a restriction on the amount of minerals which may be won and worked rather than impose conditions on the continuation of use: the abatement provisions of the 1981 Act would not therefore apply and compensation would be assessed under section 170 in its unmodified form.

31. However when an order under section 51 does not discontinue the use of land altogether but does impose conditions on the continued use of land for mineral working and mineral compensation requirements are satisfied, compensation will be abated in accordance with the compensation regulations (see paragraph 32).

Abatement of compensation following section 45 and section 51 orders

32. In relation to orders made under sections 45 and 51, the abatement provided for is a reduction in compensation by a sum equal to a prescribed percentage (currently 10 per cent) of the notional value of the right to win and work minerals in the land to which the order relates, subject to a minimum reduction of £2,500 and a maximum reduction of £100,000. The compensation regulations provide for the notional value to be calculated by reference to the annual value of the right to win and work minerals at the site and a capitalisation factor which takes account of the future life of workings.

33. Schedules 1 and 2 to the compensation regulations describe the methods to be used in determining the annual value of the right to win and work minerals at a site and the estimated life of minerals in a site. These methods are outlined in Annex 3. The reduction in compensation is calculated by using the formulae set out in Annex 4.

Prohibition orders

34. When an order is made under section 51A prohibiting the resumption of mineral working compensation may be payable under Section 170 of the 1971 Act. The items for which compensation may be claimed under this section are described in paragraph 28.

35. Where mineral compensation requirements are satisfied (see Annex 2), compensation will be assessed and abated in the manner prescribed in the compensation regulations, including the special provision that the value of any mineral in the site that cannot be extracted because of the order is to be ignored in assessing compensation. The amount of compensation payable will then be reduced by the prescribed sum of £5,000.

36. Where mineral compensation requirements are not met, the assessment of compensation reverts to section 170 in its unmodified form and the value of any mineral in the site which cannot be extracted because of the order will be taken into account.

Suspension orders

37. Compensation is also payable under section 170 of the 1971 Act where an order is made under section 51B requiring steps to be taken for the protection of the environment while mineral working is suspended.

38. Where the mineral compensation requirements are satisfied, compensation will be assessed and abated in the manner prescribed in the compensation

regulations ie the initial amount will be assessed in accordance with section 170 as modified by the regulations and will then be reduced by the prescribed sum of £5,000. Where mineral compensation requirements are not met the assessment of compensation reverts to section 170 in its unmodified form.

Apportionment

39. Where mineral compensation requirements are satisfied and compensation following an order is reduced, the reduction in compensation may have to be apportioned between claimants. This depends on the ownership of the land and the minerals subject to the order. If there is only one owner, the whole amount of the reduction will of course be set against his claim. However, where there is more than one person with an interest in the land and minerals affected by an order, each claimant's compensation will be reduced by the same proportion of the whole reduction as his interest in the land and minerals bears to the total value of the land and minerals.

40. Section 178 of the 1971 Act applies the rules in section 5 of the Land Compensation Act 1961, as far as applicable, to the assessment of the depreciation of the value of an interest in land. Any dispute over the amount of compensation should be referred to the Land Tribunal.

COMPLETION NOTICES, ENFORCEMENT AND STOP NOTICES

Completion notices

41. Where development has begun within the period imposed, or deemed to be imposed, in the planning permission and has not been completed within that period, the local planning authority may serve a completion notice under section 44 of the 1971 Act if in their opinion the development will not be completed within a reasonable period. While this general power applies to mining operations it will not normally be appropriate as such operations are essentially long term. Mineral planning authorities will probably find that prohibition and suspension orders are more useful as far as such operations are concerned.

Enforcement

42. Under section 87 of the 1971 Act mineral planning authorities are empowered to serve an enforcement notice when it appears to them that a breach of planning control has occurred and they consider it expedient to do so 'having regard to the provisions of the development plan and to any other material considerations'. A breach of planning control arises if development has been carried out without planning permission or if conditions or limitations subject to which planning permission was granted have not been complied with.

43. Section 87(4) of the 1971 Act, as amended by the Local Government and Planning (Amendment) Act 1981, restricts the exercise of this power by providing that, in the case of certain breaches of planning control, an enforcement notice may be served only within the period of 4 years from the date of the breach. Such cases include:

(a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, or

(b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land.

The application of section 87(4) to mineral working is modified by Regulation 4 of the Town and Country Planning (Minerals) Regulations 1971 which provides that an enforcement notice in respect of non-compliance with any condition or limitation subject to which permission for mining operations was granted may be served at any time within 4 years after the non-compliance has come to the knowledge of the mineral planning authority.

44. When applying the '4 year rule' to development consisting of the winning and working of minerals, the Appeal Court decision in Thomas David (Porthcawl) Ltd and others v Penybont RDC and others (1972) is relevant. In that case the Court of Appeal upheld the judgement of the High Court that, while those excavations carried out more than 4 years previously could not be the subject of enforcement action, and no requirement could be made to fill in those workings, enforcement action could be taken against excavations undertaken within the preceding 4 years. The fact that the top surface of the land had been excavated more than 4 years previously, and had become immune from enforcement action, did not meant that all further excavations of that land were also immune: each shovelful was a fresh act of development.

45. Enforcement action is taken by issuing an enforcement notice and serving copies on the owner and occupier of, and any other person with an interest in, the land and specifying the alleged breach of planning control. The notice must state the steps to be taken to remedy the breach. These might include the cessation of a use of land (mining operations are a use of land for this purpose by virtue of the Town and Country Planning (Minerals) Regulations 1971), the demolition or alteration of buildings or works, the compliance with conditions imposed by a planning permission and the reclamation of the land. The notice must also specify the period within which those steps are to be taken and the date it takes effect — this must not be less than 28 days after the date of service of copies of the notice.

46. During the period before a notice takes effect, any person having an interest in the land or occupying it by virtue of a licence in writing, may appeal to the Secretary of State on various grounds, set out in section 88(2) of the 1971 Act as amended by the Local Government and Planning (Amendment) Act 1981. The notice then has no effect pending final determination of the appeal. The courses open to the Secretary of State include upholding or quashing the notice, granting planning permission for the development in question, discharging or amending

conditions and determining any purpose for which the land may lawfully be used.

47. Under section 246 of the 1971 Act an appeal may be made to the High Court against a decision by the Secretary of State on an enforcement appeal. This right is confined to points of law and the Court has no jurisdiction over planning policy.

Stop notices

48. When an enforcement notice has been issued but has not taken effect the local planning authority may serve a stop notice prohibiting any person from carrying out any activity which is, or is included in, a matter which is alleged to be in breach of planning control (section 90 of the 1971 Act, inserted by section 1 of the Town and Country Planning (Amendment) Act 1977). A stop notice may take effect after 3 days. In certain circumstances it may lead to the payment of compensation (see paragraph 51).

49. Penalties for non-compliance with an enforcement notice or a stop notice are prescribed in sections 89 and 90 of the 1971 Act. Section 93 prescribes penalties for carrying out further development designed to reinstate or restore buildings or works which have been demolished or altered in compliance with an enforcement notice.

50. In default of action by a person served with an enforcement notice the local planning authority may, under section 91 of the 1971 Act, enter land and take the steps required by the notice. They may then recover their expenses from the owner of the land, who has a remedy against the person who committed the breach of control.

51. Under section 177 of the 1971 Act (as amended by section 2 of the Town and Country Planning (Amendment) Act 1977) a person suffering loss or damage directly attributable to a stop notice may claim compensation in certain circumstances. These include:

(a) the quashing of the enforcement notice to which the stop notice relates on any grounds except that planning permission ought to be granted for the development or that a condition alleged not to have been complied with ought to be discharged,

(b) the varying of the enforcement notice so that the alleged breach of control no longer includes one or more of the activities prohibited by the stop notice,

(c) the withdrawal of the enforcement notice, unless this is because planning permission is granted for the development or for its retention or continuance without complying with the disputed conditions, or

(d) the withdrawal of the stop notice.

Loss or damage for which compensation may be claimed includes contractual liabilities incurred by compliance with the notice. The stop notice arrangements are described in Circular 4/87 (WO 7/87).

Certificates of established use

52. Section 94 of the 1971 Act provides for a certificate of established use, giving immunity from enforcement action, to be issued for a use of land if:

(a) the use was begun before the beginning of 1964 without planning permission in that behalf and has continued since the end of 1963, or

(b) the use was begun before the beginning of 1964 under a planning permission in that behalf granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1963, or

(c) the use was begun after the end of 1963 as the result of a change of use not requiring planning permission and there has been, since the end of 1963, no change of use requiring planning permission.

Under section 95 there is a right of appeal to the Secretary of State, against the refusal by the local planning authority to issue a certificate. Since for the general purposes of the 1971 Act mineral working is not a use of land a certification of established use cannot apply to the carrying out of mineral operations. But there may be some activities carried on by mineral operators, such as the deposit of waste, which could constitute a use of land for which a certificate may be sought. Details of the procedure relating to application for established use certificates are given in the General Development Order and are similar to those for an application for planning permission.

Default powers

53. Section 276 of the 1971 Act gives the Secretary of State powers to act on, among other matters,

revocation or modification of a planning permission;

discontinuance of any use of land;

removal or alteration of existing buildings or works;

prohibition and suspension orders;

completion notices;

enforcement of planning control; and stop notices,

if it appears to him to be expedient, after consultation with the mineral planning authority, that one of the orders should be made or notices served.

ANNEX 1

References

A. DOE CIRCULARS

11/86 (WO 21/86) Town and Country Planning (Minerals) Act 1981.

4/87 (WO 7/87) Provisions and Procedures for Stop Notices.

B. REPORTS

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

CPOS Report 'The Review of Mineral Working Sites'. (This can be obtained from the County Planning Officer, Derbyshire County Council, County Offices, Matlock, Derbyshire).

CIRCUMSTANCES IN WHICH MINERAL COMPENSATION REQUIREMENTS ARE SATISFIED

1. *In the case of section 45 orders*, the requirements are satisfied where:

(a) the order modifies a planning permission for the winning and working of minerals, and

(b) the order does not:

(i) impose any 'restriction on the winning and working of minerals' (as that phrase is defined in section 178C of the 1971 Act — the definition includes any provision which in any way restricts the total quantity of minerals to be extracted), or

(ii) modify or replace any such restriction which had been imposed by a condition on a planning permission or by any order under sections 45, 51 or 51A, (a relevant order), and

(c) special consultations about the making of the order and its terms have been carried out (under section 178B of the 1971 Act, such consultations must include any person with an interest in the land or in the minerals in, on or under the land and, in shire counties, with the district council in whose area the land is situated), and

(d) either:

(i) the permission was granted not less than 5 years before the date of the order, or

(ii) the permission was granted before the commencement of section 30A of the 1971 Act (22 February 1982) and the order only imposes an aftercare condition, and

(e) the order is made more than 5 years after any previous relevant order.

2. *In the case of section 51 orders*, the requirements are satisfied where:

(a) either:

(i) the order imposes any condition on the continuance of the use of land for the winning and working of minerals, or

(ii) the order requires that any buildings or works, or plant or machinery used for the winning and working of minerals be altered or removed, and

(b) mineral working began at least 5 years before the date of the order, and

(c) the order does not:

(i) impose any restrictions on the winning and working of minerals, or

(ii) modify or replace any such restrictions imposed by a condition on a planning permission or by an order under sections 45, 51 or 51A, and

(d) special consultations have been carried out (see paragraph 1c), and

(e) the order is made more than 5 years after any previous relevant order.

3. *In the case of section 51A orders*, the requirements are satisfied where:

(a) development consisting of the winning and working of minerals began at least 5 years before the date of the order,

(b) special consultations about the making of the order and its terms have been carried out, and

(c) the order is made more than 5 years after any previous relevant order.

4. *In the case of section 51B orders*, the requirements are satisfied if special consultations about the making of the order and its terms have been carried out.

CALCULATION OF COMPENSATION THRESHOLD IN RELATION TO SECTION 45 AND SECTION 51 ORDERS

1. Where the mineral compensation requirements are satisfied and a claim for compensation is made compensation is first calculated in accordance with:

- section 164 of the 1971 Act (as amended) in the case of section 45 orders; and
- section 170 of the 1971 Act (as amended) in the case of section 51 orders.

2. Subject to a minimum reduction of £2,500 and a maximum reduction of £100,000, compensation is then reduced by a sum equal to 10 per cent of the notional value of the right to win and work minerals in the land to which the order relates. The notional value is calculated by reference to the annual value of the right to win and work minerals and a capitalisation factor which takes account of the future life of workings.

3. To find the annual value of the right to win and work minerals where only one mineral is being won and worked at the site on the date when the order takes effect it is necessary to:

(1) deduct from the figure specified in the valuation list as the net annual value of the site the figure which is specified in that list as its rateable value. Where the site does not consist of, include or form part of a mine or quarry as defined in the Mines and Quarries Act 1954, or any part of a mine or quarry, the sum must be calculated in a different way by deducting from the rateable value the figure which the valuation officer certifies would have been specified in the valuation list as the rateable value of the site had it consisted of a mine or quarry,

(2) multiply the resulting sum by 2, and

(3) further multiply the resulting sum by the appropriate factor which is calculated in accordance with paragraph 7 of Schedule 1 to the compensation regulations (as amended) (see Annex 4).

4. In calculating the annual value of the right to win and work minerals, no account should be taken of any minerals not permitted to be won and worked on the date when the order takes effect.

5. Where 2 or more minerals are being worked at a site on the date when the order takes effect step 1 in paragraph 3 above should be replaced by the following steps:

(1) take the figure which the valuation officer certifies to be the portion of the net annual value of the site (as specified in the valuation list) which is attributable to that mineral, and

(2) deduct the figure which the valuation officer certifies to be the portion of the rateable value of the site (as specified in the valuation list) which is attributable to that mineral. Where the site does not consist of, include or form part of a mine or quarry, or any part of a mine or quarry, take the figure which the valuation officer certifies to be the portion attributable to that mineral which would have been specified in the valuation list as the rateable value of the site had it so consisted.

6. To find the estimated life of the site where only one mineral is being won and worked at the site on the date when the order takes effect, the quantity of that mineral remaining unworked on that date is divided by the annual rate of extraction (the rate used by the Mineral Valuer in determining NAV and RV for the site). The quantity of mineral remaining unworked is to be taken as the amount which, if the site were sold on the open market, a willing vendor and a willing purchaser might be expected to agree as being economically workable and saleable mineral reserves. The relevant 'life of site multiplier' is specified in paragraph 1 of Schedule 2 to the regulations. Where two or more minerals are being won and worked, the life of each is separately calculated in the same way. Information on mineral reserves and annual output levels provided by an operator can be supplemented by that available from other sources including the Inland Revenue Valuation Office which will be able to supply details relative to the net annual value and rateable value of a site and the life of the mineral reserves.

7. The sum to be deducted in the case of compensation arising from section 45 or 51 orders is calculated using the formulae specified in Annex 4.

8. Under section 69 of the General Rate Act 1967 it is possible to alter retrospectively the entry (or entries) shown in the rating valuation list in respect of the site to which an order relates. A proposed alteration which is confirmed may be made retrospective to the beginning of the rating year in which the proposal is made. Provision is made in Schedule 1 for the case where there is, at the time a claim for compensation is made, an outstanding proposal for the alteration of the rating valuation list which relates to the site to which the order relates (or any part of it) and to an alteration which would take effect from a date on or before the date when the order takes effect. In such cases, the net annual value and the rateable value of the site are to be those shown in the valuation list after a decision has been reached on the proposal for alteration.

9. Orders may be made in respect of sites which form part of a rating hereditament for which an entry is shown in the rating valuation list, or which consist or form part of more than one hereditament. In such cases it will be necessary to apportion or aggregate the relevant rateable value(s) and net annual value(s).

ANNEX 4

FORMULAE FOR CALCULATION OF THE SUM REFERRED TO IN PARAGRAPH 7 OF ANNEX 3

1. *Where the site contains an active mine or quarry*:

$$TS = \frac{2(NAV - RV) \times I \times L}{10}$$

where TS = The Sum
NAV = Net Annual Value
RV = Rateable Value
I = Indexation Factor
L = Life of Site Multiplier

2. The portion of the formula $(2(NAV - RV) \times I)$ represents the annual value of the right to win and work minerals. The net annual value (NAV) and the rateable value (RV) are obtainable from the rating valuation lists kept by rating authorities and by the Local Valuation Officer of the Inland Revenue.

3. The indexation factor (I) is used to bring the values obtained from the rating list up to the values current at the date of confirmation of the order. It is obtained by multiplying the All-Items Retail Price Index for the month in which the order is confirmed by 0.0428339 and rounding to 2 decimal places (paragraph 7 of Schedule 1 to the regulations (as amended)). The figure of 0.0428339 is calculated by revaluing the All-Items Retail Price Index to the 1 April 1973 base date assumed for the rating valuation list and dividing the result by 100.

4. The way the estimated life of the site is to be assessed is set out in paragraph 6 of Annex 3.

5. *Where the site does not contain a mine or quarry* (eg a plant site or a peat working site) there will be no NAV and the annual value element must be calculated in a different way. The formula is:

$$TS = \frac{2(RV - RV \text{ specified by VO}) \times I \times L}{10}$$

where VO = Local Valuation Officer of the Inland Revenue. This calculation applies most significantly to peat workings. Peat cut for sale is defined as a mineral for planning purposes under section 290 of the 1971 Act but it is not a mineral for rating purposes under the Mines and Quarries (Valuation) Order 1983. Peat workings are not, therefore, regarded as a mine or quarry for rating purposes.

6. In a very unusual situation where not only peat but one or more other minerals are being won and worked on a site which is not regarded as a mineral hereditament for rating purposes, separate calculations must be made for each mineral and the results then added together.

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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