Inspector's conclusions

251. In my view the main considerations in this appeal are: the effects of the proposed scheme on the health and amenity of local residents and of pupils at the nearby primary school, particularly in respect of dust and noise; the effects of coal lorries on the safety and amenity of the local road network, particularly as they pass through Blaenavon; the effects on other matters, including ecology and archaeology; whether or not the proposal would be in accordance with the development plan; whether there are exceptional circumstances sufficient to justify coal working within 500 metres of settlements; and whether the benefits and policy support for the scheme outweigh the disbenefits and policies against it.

252. The scheme is considered in its amended form with coal working no nearer than 200 metres from the nearest houses and with the western face moved about 10 metres to the east for slope stability reasons. The amended scheme would produce some 256,000 tonnes of coal and have a duration of just under 4 years.

Noise Effects

253. The operation of plant and lorries on the site would give rise to increased levels of noise that would affect the amenity of occupants of nearby houses and the primary school. Background noise levels in Varteg are currently quite low and have been measured as approximately 35 dB L_{90} (the noise level exceeded for 90% of the time during the measurement period). Government Policy (as explained in Minerals Technical Advice Note 2: Coal {MTAN2}) is that quiet rural areas warrant greater protection than might be expected in noisier urban environments, and this is achieved by applying a limit on noise emissions from normal coal working based on an acceptable increase of 10 dB over the present background noise level, i.e. a limit of 45 dB L_{Aeq} 1 hr measured outside sensitive properties.

254. In order to allow screening bunds to be constructed between the main working area and nearby properties (which would have beneficial effects during the course of the main operations) MTAN2 advises that an exception to this limit should be allowed for a short period of time (for up to 8 weeks per year during limited working hours, 1000 – 1600 hours Monday – Friday) during initial soil stripping and baffle mound construction and final removal of the mound, subject to an absolute limit of 67 dB L_{Aeq} 1 hr. Noise modelling has been carried out to assess performance against these limits during the various stages of the proposed scheme, using worst case assumptions about the positions and work patterns of the plant concerned.

255. The results show that the 45 dB limit would not be exceeded at the outdoor amenity areas of nearby properties except for a few weeks at the beginning and end of the scheme when the short-term 67 dB limit would not be exceeded. However, there would be slight exceedance of the 45 dB limit at the nearest facades to the site for some properties: at several houses and the primary school during the first and last few weeks of the scheme; and at Pembroke Terrace and Pembroke Place (the houses nearest to the working areas) at other times. However, the latter would be by no more than 1-2 dB, a difference that would be only slightly discernible. Bearing in mind that this prediction is based on worst case assumptions and that noise levels would vary considerably depending on the location of plant, such a level would not be the norm and would only occur occasionally. I do not consider this slight deviation to be significant.

256. The modelling work also shows internal noise levels at all properties would be reasonable (measured against standards prescribed in BS8233, Sound Insulation and Noise Reduction for Buildings), even with windows partially open, except for a small number of houses closest to the site during the first and last few weeks of the scheme. If windows were

closed the standard would not be exceeded at all. The Council has argued that comparison should be made against a much lower internal noise level, 22 dB, which it has calculated from the present external background level of 35 dB (35 dB minus 13 dB allowance for a partially open window). However, I do not consider that to be an appropriate comparison as 22 dB is unlikely to represent existing internal noise levels. It is an extremely low level of noise and likely to be far exceeded by noise generated within the houses themselves regardless of outdoor noise levels.

257. Particular concerns have been expressed about the effects of increased noise at the primary school. There would be periodic slight exceedance of the 45 dB noise limit in the yard facing the site during the first and last few weeks of the scheme but nowhere else at the school and not during the main part of the scheme when the screening mound would be in place and most operations were being carried out below ground level. During the main part of the scheme outdoor teaching would not be materially affected by increased noise levels. Effects inside the school buildings would be negligible at all times, even in the prefabricated temporary classrooms.

258. Overall, whilst noise levels in the village would be increased, apart from during the first and last few weeks of the scheme, they would not have an unacceptable impact on residential amenity or conditions at the school. During the first and last few weeks, when the screening mound was being constructed and removed, higher levels of noise would be generated but not in excess of the increased limit prescribed in MTAN2. National policy considers that to be acceptable for short periods of time as it would enable site operations to be better screened for most of their duration. Although such levels of noise may give rise to complaint, the longer-term benefits would justify them.

259. I conclude that, with only minor exception, the noise generated would not exceed the prescribed limits and that it would not have an unacceptable effect on amenity. It would not conflict with the criteria in Local Plan Policy G1 or Structure Plan Policy M1.

Dust Effects on Amenity

260. Whilst dust would be generated by various activities on the site, it is not disputed that the main source would be the haul road, which would be constructed largely of sandstone excavated from deposits on the site. Whilst not immediately accessible, the site geology is such that sandstone would be available quite early in the scheme. Dust pick-up and dispersion has been modelled using standard methodology and software with input data from recommended and reasonable sources. The results indicate that the limit prescribed for nuisance dust deposits in MTAN2 of 80 mg/m2/day as a weekly average would not be exceeded at any receptor at any time during the scheme. The sensitivity of various data assumptions was also tested, and it was shown that, even if more conservative assumptions were made, very few exceedance incidents would be likely and only at properties immediately alongside the main working area. Any dust carried further away from the site would be substantially dispersed.

261. Criticism of these results has been based on the relevance and accuracy of assumptions made for the input data: the silt content and density of the haul road material; the suppression factor; and the meteorological data. The meteorological data has been taken from 2 sources: St Athan and Twynyrodyn, near Merthyr Tydfil. St Athan is the nearest weather station where cloud cover data is measured. Twynyrodyn is at a slightly lower altitude than Varteg but is not far away and is likely to be more representative of other local weather conditions than any other weather station. Worst case data has been used in respect of wind speeds and rainfall, though the latter is not critical provided the haul road is kept reasonably damp from regular wetting-down with water from a bowser. I consider the assumptions made to be entirely reasonable and quite conservative.

262. MTAN2 advises that the United States Environmental Protection Agency guidance

document AP42, Compilation of Air Pollutant Emission Factors, be used to help predict dust emissions and that factors identified for Western Surface Coal Mining are the most applicable in the absence of better information. The Council has criticised the Appellant's failure to use silt content data measured in site investigations. However, it is impossible to apply the AP42 methodology for assessing silt content if the material is not already exposed at ground level. The Appellant has used the average silt content identified for such mines, 8.4%. Objectors argue that this is merely the average of a wide range of figures and that, if the greatest value was used, much higher levels of dust generation would be predicted. That is correct. However, for the reasons set out in the following paragraph, I consider 8.4% to already be an acceptably conservative assumption.

263. The AP42 data for Western Surface Coal Mines is based on dirt haul roads, which would have a much higher silt content than one formed primarily with sandstone. The AP42 data for Taconite Mines shows significantly lower silt content levels, and that is likely to be because those haul roads are formed with sandstone, which commonly occurs in geological formations with taconite (an iron ore sedimentary formation). Even though AP42 shows higher silt content for freshly graded haul roads, the use of sandstone for haul road construction leads me to the conclusion that 8.4% is a conservative assumption for the silt content of the road.

264. A suppression factor of 90% has been assumed in the modelling, which is relatively high. The Appellant has justified this by arguing that the haul road would be reasonably short in comparison with other opencast coal sites and that it would be perfectly feasible to keep it damp by a combination of wet weather and in dry weather damping it down several times per day using a water bowser. This is a high suppression factor and, apart from a research paper that refers to an 80% value, the Appellant's justification is largely anecdotal based on expert experience. In the absence of supporting justification, I am not convinced this would be achieved. However, the sensitivity of the model to lower levels of suppression factor have been tested, and I am satisfied that acceptable levels of dust would still be achieved, particularly bearing in mind the conservative assumptions used in respect of meteorological conditions and silt factor.

265. Mention has been made of nuisance dust being deposited at properties close to the Ffos-y-fran opencast coal site at Merthyr Tydfil. However, that operation is of a much larger scale than would be the case at Varteg and uses much larger plant. In addition, the Council argues that the precautionary principle should be applied as limited confidence can be placed in the Appellant's modelling results. Clearly, predictions can never be absolutely certain. However, in this case I am satisfied that the modelling has generally been based on suitably conservative assumptions and that the levels of dust generated and dispersed to the surrounding area would be likely to be less than the levels predicted by the Appellant's modelling. It is not appropriate or necessary to apply the precautionary principle to the circumstances of these effects on amenity.

266. Whilst some nuisance dust would be experienced at properties near to the site, I conclude that it would not be likely to have an unacceptable affect their amenity. It would not conflict with the criteria in Local Plan Policy G1 or Structure Plan Policy M1.

Dust Effects on Health

267. Whilst not an issue with the Council, several third parties have expressed concerns about the health effects of dust, particularly because of the close proximity of the site to the primary school. MTAN2 advises that exposure to dust can lead to impacts ranging from minor effects on the respiratory system to premature mortality. The Appellant's dust assessment concentrated on particulate matter of diameter less than 10 μm (PM_{10}) and predicted additional airborne PM_{10} levels of no more than 6.4 μg/m_3 which, when added to the present background levels of 12.9 μg/m_3, would give total levels of less than 20 μg/m_3. This prediction, again based on quite conservative assumptions, would be only half the annual

average limit of 40 μg/m3 prescribed in the Air Quality Standards (Wales) Regulations 2010, the Welsh Government's latest Regulations aimed at the assessment and management of air quality.

268. It is common ground amongst all parties that the particulate matter most critical to health is that smaller than 2.5 μm in diameter ($PM_{2.5}$) as it can penetrate into the human respiratory system. The same Regulations specify a current annual average limit of 25 μg/m3 for $PM_{2.5}$, falling to 20 μg/m3 by 2015. The Appellant's dust assessment predicts that $PM_{2.5}$ would be considerably less than 20 μg/m3. As $PM_{2.5}$ is part of PM_{10}, even if it were 100% of PM_{10}, levels would be less than 20 μg/m3 (as explained for PM_{10} above). In fact, $PM_{2.5}$ is generally only a small proportion of the total PM_{10} amount and its predicted level would be considerably less than 20 μg/m3. Thus predicted levels of both PM_{10} and $PM_{2.5}$ would be well within the air quality limits prescribed in the most up to date national regulations.

269. In addition to natural dust, mention has been made of particulate matter in the emissions of site plant, and it has been alleged that these can be particularly polluting and harmful. It is generally accepted that there is no known safe level of particulate matter but that these particles are responsible for the main health risk associated with airborne dust. However, in this case the Appellant would intend to use new plant that would comply with the most up to date engine emission standards, which would minimise that element of air pollution. This could be ensured by a suitable condition.

270. All of this evidence has been considered by the Local Health Board (as statutory consultee for the planning application), who also sought advice from the National Health Board and the Health Protection Agency. Their conclusion on the Health Impact Assessment was that the air quality resulting from the proposed scheme would be unlikely to have an adverse effect on public health, and the Council accepted that advice. It has been submitted that children would be more susceptible to harmful effects of poor air quality than the general population, and it would certainly be wise to take a more precautionary approach when children would be at risk. However, the public health advisers above would have been aware of the close proximity to the primary school, and yet they reached their conclusion of acceptable level of risk in full knowledge of the site location.

271. The Pentwyn Against Opencast Group has referred to numerous studies carried out into the health risks associated with dust and other airborne particulate matter both on a general basis and specifically associated with opencast coal mining. It has also drawn attention to lower $PM_{2.5}$ guideline values set in the United States and by the WHO. Whilst many of these papers are quite relevant all, except some very recent studies, have been taken into account by the Government's advisory committee on air quality standards, COMEAP, in setting the standards in the latest Regulations. It is not appropriate to review Government Regulations through the planning appeal process, and reliance is placed on standards prescribed in the 2010 Regulations, which are sufficiently recent as to be confidently taken to be up to date. It is also pertinent that many of the studies referred to have been raised in evidence presented at public inquiries into other opencast coal proposals but have not led to conclusions being reached that are contrary to the advice of the relevant public health advisory body. No convincing new evidence has been put forward to lead me to any other conclusion in this case.

272. I conclude that the proposed scheme would be unlikely to have an adverse effect on public health associated with air quality. Notwithstanding that conclusion, it is clear that the public perception of health risks, although ill-founded, has the potential to cause worry and stress amongst some of the local population and the parents of children attending the primary school. This itself is a health risk to be taken into account.

Effects of Coal Lorries

273. The effects of the coal lorries have been raised by some third parties. Over a period

of 2½-3 years haulage of coal would involve some 4 No. 20 tonne lorries per hour (2 in and 2 out) over the course of each working day travelling along the B4246 and B4248 roads through Blaenavon to Brynmawr. It has been submitted that these roads are not suitable, being narrow and undulating, and that particular problems would be caused in Blaenavon, where the streets and footways are particularly narrow.

274. There is no doubt that the streets in Blaenavon are not well suited to heavy traffic. Most streets are quite narrow, and one is even so narrow that 2 heavy vehicles travelling in opposite directions have to use part of the footway to be able to pass. This clearly causes risks to the safety of pedestrians, particularly as the footway concerned is itself quite narrow. The stretch of road concerned is alongside the World Heritage Centre, which attracts a large number of visitors, many of whom are likely to use the footway concerned. The lorry route would also pass a church and a chapel where the road is sometimes restricted by cars parked for funerals and other services, which on occasions can cause congestion.

275. The additional heavy lorry traffic would add to these problems. However, the roads concerned already carry some 5000-5500 vehicles per day, of which about 10% are HGV vehicles. The Council considered the additional lorries would not significantly add to congestion or conflict of vehicles and found them to be acceptable. It is also relevant that further development is being actively promoted in Blaenavon despite the additional traffic it would generate on the same roads, and in due course it will be a matter for the Highway Authority to ensure the road network is adequate.

276. So far as the current proposal is concerned, I have no reason to disagree with the Council's highway adviser. The additional lorry traffic would represent a relatively small increase in traffic numbers and a corresponding increase in risks to highway safety, noise levels and congestion over a relatively short period of time. These would not be significant such as to be considered contrary to the criteria in Local Plan Policy G1 and Structure Plan Policy M1.

Other Effects

277. Whilst not at issue with the Council, a number of other matters have been raised by third parties, particularly in connection with the Western Valley where it would be proposed to deposit a substantial quantity of tip and overburden material. Mr Clarke maintains that, contrary to the Appellant's assertions, physical evidence indicates that the valley has not been subject to previous coal working and tipping and that it still contains a long-established set of natural habitats. He bases this argument on the presence of a scour, scour leat and dam feature, which he says is an ancient piece of industrial archaeology, and several expansive lichen populations on large stones, which indicate growth over a long period of time and, like the archaeological feature, have not been disturbed by more recent opencast coal operations.

278. Old maps and Coal Authority plans provide considerable evidence of previous opencast operations in the Western Valley and, while Mr Clarke's assertions that these are not necessarily accurate may be true, I consider it more likely that some operations have taken place in the Western Valley than none at all. Site investigations carried out there in recent years have confirmed the deposit of significant thicknesses of opencast backfill, at least over most of the valley floor, and the large areas of lichen on stones appear to be generally on individual stones rather than virgin rock deposits. That growth could have occurred partly before and partly after the stones had been moved and deposited in their present locations.

279. The alleged industrial archaeological feature is more difficult to explain. If it is such a feature then it would indicate that that part of the valley has not been subject to the tipping of opencast waste material. However, equally, it could be a recently formed drainage scour that has washed away the overlying opencast waste material in that particular location. I am unable to reach a confident conclusion on this matter. However, it is not critical to my overall

conclusions, as a condition could be applied to the permission requiring a programme of archaeological investigations to be carried out. If the feature was found to be a piece of industrial archaeology worth retention, that part of the valley could be safeguarded by amending the detailed design of the proposed tipping in that area.

280. Turning to the wider ecological effects, concerns have been expressed about a wide range of species and habitats. However, these effects have been considered in the Environmental Statement and in several additional ecological studies. The Countryside Council for Wales and the Council's own ecologist provided advice to the Council that, provided appropriate conditions were attached to any planning permission, impacts on designated habitats and protected species would not be significant and in the longterm would be mitigated by the proposed restoration plan. None of the evidence put forward at the Inquiry leads me to any different conclusion. Indeed, in the longer-term the restored landscape would be likely to provide a range of improved habitats. So far as proximity to Sites of Special Scientific Interest is concerned, I am satisfied the risks of affecting these would be negligible.

281. Particular evidence has been put forward about lichens. However, a well known lichen surveyor has advised that species identified as being rare or even unique are likely to be more common than might have been previously thought, as species that are of inconspicuous appearance or lacking a name are often under-recorded. In any case, it would be proposed to temporarily store many of the larger lichen-covered stones and reinstate them as part of the restoration scheme. With that is mind, I do not consider the proposal would cause unacceptable harm to the lichen population or any other species or habitat.

282. Mention has also been made of possible aquifer contamination. However, no evidence has been put forward to support such concerns, and the matter was adequately dealt with in the Environmental Statement, which identified certain risks and measures to control or mitigate them. Subject to these, I consider any risks would be negligible. Other concerns have been expressed about effects on the access track to Blaenmelyn Farm, common land rights on parts of the site and the safety of a cycle route crossing over the B4248 road between Blaenavon and Brynmawr. A suitable alternative farm access would be provided, commoner rights would be affected for only a limited period and the western valley would be returned for common land grazing within 5 years, and the number of coal lorries would not significantly affect traffic numbers along the B4248 road. These matters do not materially affect the main issues in this appeal.

283. It has been submitted that the scheme would harm the local economy by deterring tourism with its associated impact on local businesses. However, I consider that would be more than balanced by benefits to the local economy from employment and support services for the scheme itself. It has also been reported that some parents have said they would remove their children from Ysgol Bryn Onnen if the scheme goes ahead and, if that were to occur, it could affect the viability of the school with associated loss of jobs. Loss of pupils could occur of course but, as I have found the risks of health effects to be negligible, any such reaction would not be founded on fact.

Benefits of Scheme

284. The scheme would bring a range of benefits. The main benefit would be restoration of the land, which currently contains unsightly coal tips and the derelict remains of former coal workings comprising mine access shafts and adits on the surface and old tunnels under the ground. This would improve the character and appearance of the landscape, remove the health and safety risks associated with the coal tips and former mine workings, improve public access to the land with improvements to the network of footpaths, and provide an improved mosaic of habitats for nature conservation and enhancement.

285. These improvements would benefit the residents of Varteg, many of whom support

the proposal despite the short-term impacts on amenity that would be inevitable. Some of them have been waiting a long time for the derelict landscape to be reclaimed, an aim of the Council for many years. Without this scheme there is little prospect of the improvements being carried out in the foreseeable future as there is no other source of funding.

286. The land reclamation would make a substantial contribution towards encouraging regeneration of the local area. Varteg has been neglected for many years, and its character is harmed by its close proximity to the unsightly tips and the derelict remains of former coal mining activities on the land. However, the scheme would increase opportunities for regeneration of the village and surrounding area. As mentioned above, it would bring some immediate economic benefit, albeit quite limited. However, wider economic benefits would be encouraged in the future.

287. Finally, the scheme would, of course, provide some 256,000 tonnes of coal, a small but useful contribution towards the demand for coal. It would release a reserve that would otherwise not be exploited, though not taking full advantage of further reserves on and beyond the western edge of the site. Nevertheless, the supply of coal is a useful benefit supported by national policy.

Development Plan

288. The development plan is the starting point for consideration of the proposal. It comprises the Gwent Structure Plan, adopted in 1996, and the Torfaen Local Plan, adopted in 2000. The emerging Local Development Plan has yet to be subject to examination and so carries little weight. Relevant national policy is mainly contained in Minerals Planning Policy Wales (MPPW), dated December 2000, supported by Minerals Technical Advice Note 2: Coal (MTAN2), dated January 2009, and these are also material considerations.

289. Structure Plan policies L1 and L2 and Local Plan Policy E4 provide strong support for the scheme. Structure Plan Policy L1 encourages the reclamation of derelict land, and supporting text identifies the Varteg Tips as one of only 2 extensive areas of derelict land in Gwent not already programmed for improvement. At that time the expectation was that the former Welsh Development Agency would carry out a programme of reclamation work and that the County would be substantially free of dereliction before the turn of the century. The Varteg site lies within a designated Landscape Improvement Area, and Policy L2 says that priority should be given to land reclamation in Landscape Improvement Areas. Supporting text says that these areas are strategic priorities for landscape improvement in order to eradicate the disadvantages of these areas as places to live, invest and visit. Local Plan Policy E4 supports land reclamation and environmental enhancement schemes in Landscape Improvement Areas, and the supporting text describes Landscape Improvement Areas as areas within which the removal of dereliction should be afforded a high priority. Clearly these 3 development plan policies provide strong support for a reclamation scheme on the appeal site.

290. Whilst many reclamation schemes have been carried out and funded by the former Welsh Development Agency, that vehicle now no longer exists, and the current scheme (financed by coal recovery) is likely to be the only means by which this strategic priority can be achieved in the foreseeable future. The Structure Plan acknowledges that reclamation may occasionally be achieved as a by-product of mineral working.

291. The development plan also contains criteria based policies for acceptable developments: Structure Plan Policy M1 lists criteria for mineral developments; and Local Plan Policy G1 lists general development criteria. I have specifically concluded above that the scheme would meet those criteria relevant to the main disputed topics: noise, dust and highway safety. It would also not conflict with any of the other criteria.

292. Overall, I conclude that the proposed development would be fully in accord with all

relevant development plan policies.

500 Metres Buffer Zone

293. MPPW and MTAN2 generally provide further support for the proposed scheme. However, they also introduce the requirement for a buffer zone to be maintained between mineral workings and nearby settlements in order to protect amenity. In ordinary circumstances a 500 metres buffer zone is specified but MTAN2 makes provision for a smaller zone in exceptional circumstances and even acknowledges that working within 200 metres of a settlement may be justifiable in some circumstances.

294. In this case, the site boundary would be a little over 100 metres from the primary school and less than 50 metres from a number of residential properties, though the nearest coal working would be about 350 metres from the school and 200 metres from the nearest houses. Reduction of the buffer zone to this extent requires consideration of the merits of the remediation and of the impacts on the settlement, and demonstration of exceptional circumstances.

295. MTAN2 lists a number of factors that might be considered exceptional circumstances, and 3 of these are relevant to the appeal proposal:

- *"where coal working provides the most effective solution to prevent risk to health and safety arising from previous mineral working"*;
- *"to remediate land damaged by shallow coal workings or mine waste, where coal extraction appears to be the most suitable option"*; and
- *"when the proposal is of overriding significance for regeneration, employment and economy in the local area"*.

296. The most important factor in this case is the second of these, and there is no dispute that the proposal would *"remediate land damaged by shallow coal workings or mine waste"*. However, the Council argues that coal extraction is not necessarily the most suitable option and that the Appellant has not properly evaluated alternative options. Whilst a well structured evaluation of alternative options has not been carried out, I consider over the life of the application and appeal this requirement has been adequately met. The Appellant's initial scheme formulation included consideration of the suitable scope of a coaling scheme that was sufficiently viable to fund the reclamation works, and the scheme preferred at that stage has been further refined on 2 occasions to keep work further away from the settlement and to take account of improved knowledge about ground conditions along its western edge. No doubt further alterations could be made but there is a limit to the reduction in coal output that would maintain viability for the scheme, and I have concluded above that impacts of the latest appeal scheme on the adjoining settlement would be acceptable.

297. There can be little doubt that coal extraction is the most suitable option when no other viable option is available. Reclamation of the derelict land on the site has been part of a development plan priority for at least the last 15 years, and the alternative vehicle for achieving that aim (the former Welsh Development Agency's programme of work) no longer exists. Furthermore, there does not appear to be any prospect of alternative funding for the work in the foreseeable future and so no prospect of the reclamation being carried out except through a coal recovery scheme. Thus the circumstances required to meet this exceptional circumstance exist. The importance I attribute to them is reinforced by the long-term landscape and environmental benefits the scheme would bring and the priority attributed to achieving these benefits in the development plan.

298. On the health and safety factor, it is not disputed that the scheme would bring worthwhile benefits by removing the coal tips and the many former coal mine shafts, adits and tunnels on and beneath the site. However, the Council argues it would not provide *"the most effective solution"* and that the Appellant has not properly evaluated alternative means

of achieving these aims. There is no dispute that schemes aimed solely at overcoming health and safety risks on the site have not been evaluated by the Appellant, and no doubt this is because they would not be self-funding. The Council has suggested 2 possible schemes that would involve limited measures to safeguard the derelict former mining remains and, although the detailed costs of these are in dispute, there is no doubt they could be carried out at much lower cost than the proposed coal recovery scheme. However, responsibility for this work would rest with the Coal Authority, and there is no indication that funding would be available.

299. I do not consider this factor to represent an exceptional circumstance in its own right as the health and safety measures needed could certainly be achieved with equal effect by works having far less impact on the neighbouring settlement. Nevertheless, the appeal scheme would achieve all of those benefits as a by-product of the wider scheme proposed to achieve restoration of the land as a whole. It could be argued that, for this reason, it would be *"the most effective solution"*. However, it is a material factor in support of the scheme.

300. Finally, the third factor is that of *"overriding significance for regeneration, employment and economy in the local area"*. The direct benefits of this sort would be small. However, the supporting text to Structure Plan Policy L2 explains that priority should be given to reclamation of derelict land in Landscape Improvement Areas in order to eradicate the disadvantages of these areas as places to live, invest and visit. Thus it is reasonable to consider that the scheme would be beneficial to long-term regeneration of the local area with knock-on benefits for employment and the economy. On its own I do not consider this factor to be of *"overriding significance"*. However, it is a material factor in support of the scheme.

301. MTAN2 provides no guidance on how exceptional the circumstances have to be to justify relaxation of the national policy for a 500 metres buffer. I take it to depend on the particular circumstances of each site and the effectiveness of measures needed to mitigate impacts on the nearby settlement. In this case I conclude that exceptional circumstances are made out to justify relaxation of the buffer zone policy on account of the remediation of the land damaged by former coal working and waste tips, particularly in view of the priority attributed in development plan policies to this remediation in Landscape Improvement Areas. This is further reinforced by additional benefits in removing risk to health and safety arising from previous mineral working and in improving the prospect of long-term regeneration of the local area.

302. The Council has argued that the precautionary principle is a key element of Welsh Government policy and that it should be applied in this case because of lack of certainty in the assessments of dust and noise impacts. There can never be certainty in predictions of impacts. However, I am satisfied that in this case the predictions are based on conservative modelling assumptions and represent reasonable assessments of worst-case scenarios. Furthermore, there is no question of causing irreversible environmental damage; the long-term environmental effects would be positive.

Possible Conditions

303. Suitable conditions would need to be included in any planning permission in order to properly control the development and to ensure that necessary mitigation measures were included. Discussions into possible conditions were held at the Public Inquiry and, on the basis of those, I have drafted a set of suitable conditions with appropriate modification of those put forward at the Inquiry in order to improve their precision and effectiveness. An Annex of suitable conditions is attached that would pass the tests prescribed in Circular 35/95, The Use of Conditions in Planning Permissions. It should be noted that the numbers of the recommended conditions in the Annex do not follow those in the Council's draft set of conditions. The S106 Undertaking would meet the tests prescribed in Circular 13/97 and in the Community Infrastructure Levy Regulations 2010 and has also been taken into account.

Overall Balance and Conclusions

304. I have concluded above that the proposed development would be fully in accord with all relevant development plan policies. It would also be supported by the main national policies contained in Minerals Planning Policy Wales and the supporting guidance in Minerals Technical Advice Note 2: Coal. The proposal would be environmentally acceptable or could be made to be so by planning conditions or obligations, there would be no lasting environmental damage (in fact, there would be long-term environmental benefits), and the restoration plan would result in the land being restored to a high standard and to beneficial and suitable after-uses. These are the requirements for opencast proposals specified in MPPW.

305. I have also concluded above that exceptional circumstances exist to justify relaxation of the 500 metres buffer zone ordinarily required by national policy on account of the benefits achieved in remediation of land damaged by former coal working and waste tips, particularly in view of the priority attributed in development plan policies to this remediation in Landscape Improvement Areas. This is further reinforced by additional benefits in removing risk to health and safety arising from previous mineral working and in increased prospects for associated long-term regeneration of the local area.

306. The proposed scheme would not have unacceptable impacts on the amenity of local residents or children attending the nearby primary school, on highway safety or convenience, on local ecology or on any other environmental matters. Risks to health associated with dust generated on the site would be negligible. Whilst some local residents and parents of pupils at the school might experience worry and stress over health risks, these would be ill-founded. I do not consider them to outweigh the environmental benefits and strong development plan policy support for the scheme.

307. I have taken into account the Environmental Statement as modified in 2009 and supplemented in 2010, along with all other environmental information submitted to the Public Inquiry and all other matters raised. Nothing outweighs the considerations that have led me to my main conclusions above. I conclude that the appeal should be allowed.

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