



DEVELOPMENT CONTROL AND REGULATORY BOARD

11th MARCH 2021

REPORT OF THE CHIEF EXECUTIVE

COUNTY MATTER

PART A – SUMMARY REPORT

APP.NO. & DATE:	2020/1838/07(2020/VOCM/0172/LCC) – 20 th October 2020
PROPOSAL:	Application to vary conditions attached to planning permission Ref. 2019/2456/07 to enable alterations to restoration scheme
LOCATION:	Former Minorca Surface Mine, Bosworth Road, Measham.
APPLICANT:	The National Forest Company
MAIN ISSUES:	Restoration and aftercare requirements, the River Mease Special Area of Conservation, and ecology.
RECOMMENDATION:	Permit subject to a S106 agreement and subject to the conditions included in Appendix B

Circulation Under Local Issues Alert Procedure

Mr. S.D. Sheahan CC. (Forest & Measham ED)

Mr. D. Harrison CC. (Ibstock & Appleby)

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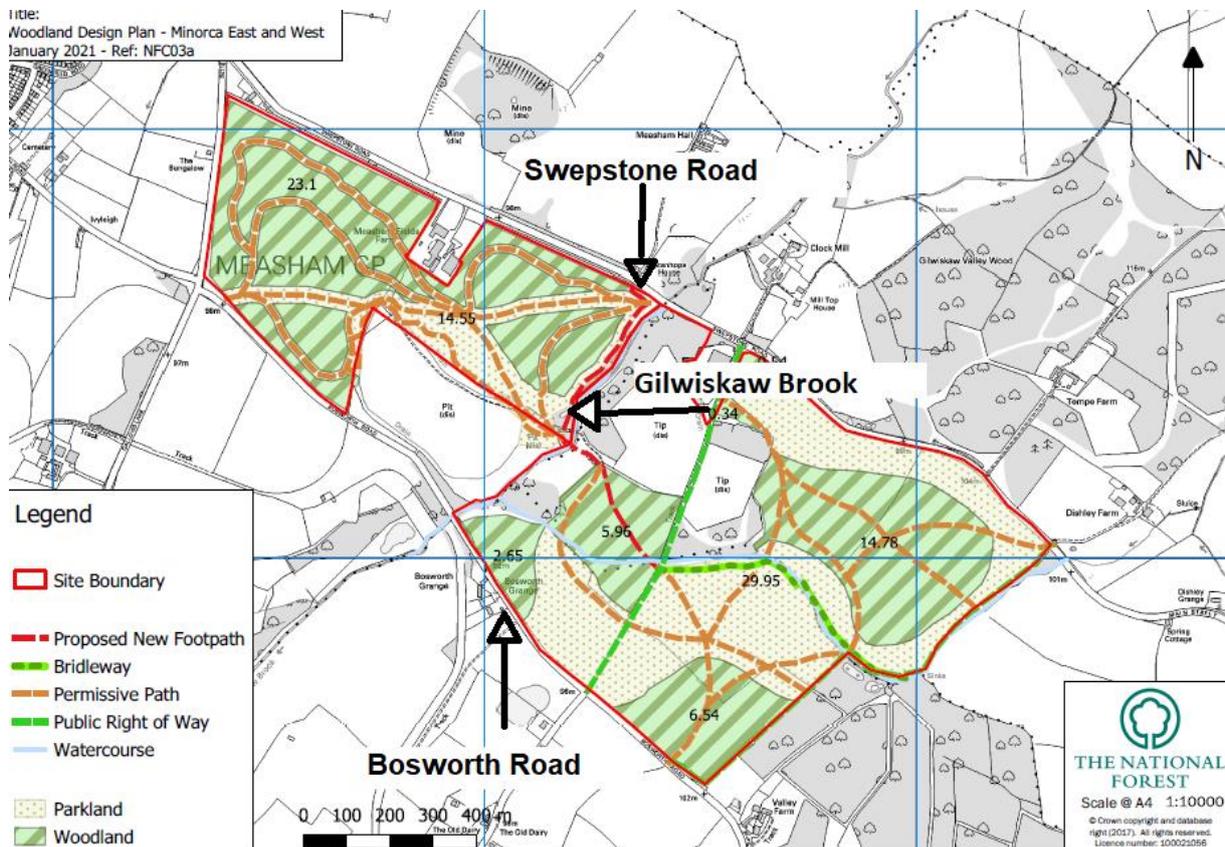
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PART B – MAIN REPORT

The Site and Surroundings

1. The site is currently accessed off Swebstone Road, at a point about 600 metres to the south east of the junction between Swebstone Road and Gallows Lane. The northern boundary of the site abuts Swebstone Road and the site is bound by Bosworth Road to the south and the B4116 to the west. The centre of Measham is about 1km to the west of the site. To the east, the site is adjoined by an area of woodland known as Wynn's Wood and agricultural land. The centre of the village of Swebstone is approximately 800m to the east of site's boundary.
2. The Gilwiskaw Brook flows north to south through the middle of the site and into the River Mease, approximately 1.6km to the south west of the site. The Gilwiskaw Brook is designated as a Site of Special Scientific Interest (SSSI) and forms part of the River Mease Special Area of Conservation (SAC). The watercourse is therefore of international and national importance for nature conservation.
3. Bridleway Q33 runs through the centre of the site, linking Swebstone Road to the north with Bosworth Road to the south. Footpath O57 runs parallel to the bridleway along the eastern boundary of the site, also running between Swebstone Road and Bosworth Road.
4. Several designated heritage assets lie in close proximity to the site and the site therefore lies within their setting. These designated heritage assets include six listed buildings which lie to the east of the site, in Swebstone. The closest and highest designated building being the Grade II* listed Church of St Peter. Outside of Swebstone, the Grade II listed Valley Farmhouse lies approximately 140 metres south-east of the site. The Grade II listed Tempe House lies approximately 275 metres to the north of the site. To the west, the Grade II listed Measham Lodge lies approximately 520 metres to the south-west of the site. Further west, additional designated heritage assets lie within the village of Measham. As those buildings lie within the village, views to and from those assets from the application site are not afforded.
5. The majority of the site lies outside of any flood zone. However, a small strip of land which follows the Gilwiskaw Brook through the centre of the site, falls within Flood Zone 3 (1 in 100 or greater annual probability of flooding). Additionally, a strip of land which runs along an unnamed tributary which crosses the eastern half of the site lies within Flood Zones 2 (between 1:1000 and 1:100 annual probability of flooding) and 3.
6. The majority of the land which falls to the west of the Brook comprises Grade 2, Grade 3a and 3b agricultural land. This land is currently used for grazing. Approximately one quarter of the land to the east of the Brook is classified as 'unknown' in Agricultural Land Classification by Natural England and one quarter is identified as a mix of Grade 2, Grade 3a and Grade 3b in quality. The majority of land to the east of the Brook, is currently in agricultural use. The remaining land forms part of woodland or wetland habitats.

7. Vehicular access to the site during the mining and restoration works was previously gained via a temporary access which was provided by the operator off Bosworth Road to the south-west of the application site. This access was required to be removed and restored under planning permissions 2013/0986/07 and 2013/0983/07. This access has since been removed and restored and vehicular access to the site can be gained off Swebstone Road via Measham Fields Farm.



Planning History

8. UK Coal Ltd submitted a planning application in July 2009 (2009/0720/07) for the extraction of coal and fireclay and subsequent restoration to agriculture, woodland and nature conservation on land to the east of Gallows Lane and between Swebstone Road and Bosworth Road, between the villages of Measham and Swebstone. In June 2011, the County Council resolved to grant permission subject to conditions and a S106 legal agreement. The site was known as the Minorca Surface Mine and the first coal was extracted in October 2012. Permission was granted for five years of coal extraction.
9. In 2013, planning permission was granted for an extension to the Minorca Surface Mine for the demolition of a farmhouse and agricultural buildings and the extraction of coal and fireclay by surface mine methods with restoration to agricultural dwelling, agriculture and nature conservation (2013/0983/07). In 2013 planning permission was also granted to vary conditions attached to permission no. 2009/0720/07 (2013/0986/07) to allow the extraction to take place.
10. The site has since been worked and was fully restored as of the 30th June 2017, as per the approved plans. The site is currently in its third year of aftercare. The site is required to undertake aftercare and management works each year. At

present, several of the aftercare works have been completed on the site. The fields to the west of the brook are used for grazing, separated by stock fencing and hedgerows which have been seeded and planted during the aftercare period. The fields to the east of the brook have returned to agricultural use, following seeding and aftercare management. Additionally, the ongoing management and maintenance of the site to the west of the Gilwiskaw Brook is bound by an approved Habitat Management Plan which runs until 2031 and a 20-year enhancement plan which covers those areas which are colliery spoil grassland.

11. Subsequently, the National Forest Company (NFC) sought to purchase a substantial portion of the site which lies to the east of the Gilwiskaw Brook. This parcel of land was not previously worked as part of the former mine but was used as an overburden storage area. This parcel of land is approximately 80ha and is in its third year of aftercare. As well as agriculture, this area of land also includes those habitats retained along the Brook within an approved and managed 20 metre buffer zone, two fields 5.53 ha in area which comprise hay meadow and an area of existing wet woodland.
12. The NFC submitted a variation of condition planning application in December 2019 to enable an amended restoration scheme to be an option for the eastern parcel of the site (conditions to be varied were from application Ref.2013/0986/07). In March 2020, planning permission was approved subject to conditions and a S106 legal agreement. Planning permission was issued on 30th April 2020 (Permission Ref: 2019/2456/07).
13. The approved optional amended restoration scheme to the eastern section of the site included an open public access woodland, through the incorporation of the existing public rights of way across this section of the site, the creation of new public rights of way and the formation of a network of permissive paths. It also included the expansion of the new woodland created on the site from 5ha to approximately 30ha, when compared to the approved restoration plan Drawing No. 193D03D (Application Ref. 2013/0986/07). The new woodland is to be planted in place of the existing agricultural land on this parcel of land. This amended restoration scheme was implemented on 12th October 2020 (as confirmed by the NFC), with this parcel of land now being owned and managed by the NFC.
14. The land to the west of the Gilwiskaw Brook, which has been restored back to agriculture and is also currently in its third year of aftercare, remained undisturbed as part of the previous application. Thus, the ongoing management and enhancement requirements are still be in place and enforceable for that parcel of land to the west of the Gilwiskaw Brook as per conditions and legal agreement attached to planning permission Ref. 2019/2456/07.

Description of Proposal

15. As noted in the preceding section of the report the NFC have purchased the portion of the site which lies to the east of the Gilwiskaw Brook and the amended restoration scheme to this section of the site as approved under permission Ref. 2019/2456/07 has been implemented. The NFC are now seeking to purchase the western part of the site in order to increase the scale of woodland, other habitats and public access being created.

16. This application does not seek to alter any of the previously agreed woodland design, trees species or management of the approved application Ref. 2019/2456/07 to the eastern section of the site. The application only relates to the land to the west of the Gilwiskaw Brook, with the exception of the winter storage lake. This application does not seek to change the agreed restoration and aftercare of the lake and surrounding land except for to the north-eastern corner. The western part of the site measures approx. 40 ha in area and it has recently been worked for coal. It has subsequently been restored as grassland and is being actively used for grazing. This section of the site is bound to the north by Swepstone Road and to the south by Bosworth Road, whilst Gallows Lane forms the western boundary. The site is heavily screened along the boundaries from hedgerows and trees, except for a gate access on the south-western corner of the site. The topography of this section of the site includes sloping land from north to south. The land has been separated into field parcels by hedgerow planting however this has yet to mature.
17. This application seeks to vary conditions attached to planning permission 2019/456/07 to enable an amended restoration scheme to be an option for the western parcel of the site. The intention is for the NFC to create a new National Forest woodland that will integrate and connect to the woodland to the east of the site which has been approved and implemented through planning approval 2019/2456/07. This option mainly proposes plantation woodland in a large compartment with smaller areas of parkland. The application has been amended to increase the width of the permissive routes throughout the western section of the site to modestly increase the proportion of parkland and create more woodland edge. The modifications also increase the area of parkland to the north of the lake.
18. The NFC has estimated that the proposal would result in the site accommodating an additional 77,000 trees. This new woodland is proposed to be planted in place of the existing agricultural land on this section of the site. It is proposed to allow this alternative restoration scheme to come forward as only an option for the western section of the site at the current time, whilst allowing the existing restoration scheme and aftercare and management requirements to remain in place for enforcement purposes, should the proposed NFC scheme not come forward for any reason.
19. In support of the proposal, the NFC have submitted a draft S106 agreement in support of their application to vary conditions on the site. The draft agreement proposes to remove the land to the west of Gilwiskaw Brook, with the exception of the storage lake, from the original legal agreement, dated 25th June 2011. The original legal agreement requires a part of the site (lake and surrounding land) to be transferred to Leicestershire County Council. This application seeks to vary the legal agreement and attached plan to so that a smaller parcel of land is transferred to the County Council to allow access to the replacement bridge to the Gilwiskaw Brook to fall outside of the transferred land.
20. It is proposed that the land to the west of the Brook, should the proposed optional restoration plan be implemented, be managed in accordance with a new tailored Woodland Creation and Management Plan. This would be controlled by way of planning condition rather than by S106 agreement.

Proposed Woodland Creation

21. The submitted woodland design plan comprises a comprehensive scheme across the majority of the former Minorca Surface Mine, including land to the east and west of the Gilwiskaw Brook but excludes the winter storage lake and some land to its immediate surrounds. The proposals to the east of the Brook are unaltered from application Ref. 2019/2456/07, whilst the proposed amended scheme to the western part of the site is to be mainly woodland in a larger compartment crossed by a series of rides with smaller pockets of parkland. As noted above these woodland rides have been amended to increase their widths to create some additional parkland and woodland edge. The proposed woodland planting would include a broad range of tree and shrub species to create a multipurpose woodland. The species mix takes into account resilience to pests and diseases, ground conditions given recent restoration, expected climatic changes, management needs, the potential of a future timber crop along with amenity and landscape considerations. The species listed in Table 1 are proposed.

Table 1. Proposed species for woodland planting.

	Latin name	Common name	Size (cm)	Root/pot	%
Broadleaves	<i>Acer campestre</i>	Field maple	40-60	BR	2
	<i>Alnus glutinosa</i>	Common alder	40-60	BR	9
	<i>Betula pendula</i>	Silver birch	40-60	BR	12
	<i>Betula pubescens</i>	Downy birch	40-60	BR	2
	<i>Carpinus betulus</i>	Hornbeam	40-60	BR	10
	<i>Populus tremula</i>	Aspen	40-60	BR	2
	<i>Prunus avium</i>	Wild cherry	40-60	BR	5
	<i>Quercus robur</i>	English oak	40-60	BR	25
	<i>Quercus petraea</i>	Sessile Oak	40-60	BR	4
	<i>Sorbus aucuparia</i>	Rowan	40-60	BR	1
	<i>Sorbus torminalis</i>	Wild Service tree	40-60	BR	1
	<i>Tilia cordata</i>	Small leaved lime	40-60	BR	8
	<i>Ulmus glabra</i>	Wych Elm	40-60	BR	1
Conifers	<i>Pinus sylvestris</i>	Scots pine	20-40	Cell	3
	<i>Thuja plicata</i>	Western Red Cedar	20-40	Cell	1
	<i>Pseudotsuga menziesii</i>	Douglas fir	20-40	Cell	2
Shrubs	<i>Cornus sanguinea</i>	Dogwood	40-60	BR	0.5
	<i>Corylus avellana</i>	Hazel	40-60	BR	8
	<i>Crataegus monogyna</i>	Hawthorn	40-60	BR	0.5
	<i>Ligustrum vulgare</i>	Wild privet	40-60	BR	0.5
	<i>Malus sylvestris</i>	Crab apple	40-60	BR	0.5
	<i>Rhamnus frangula</i>	Alder buckthorn	40-60	BR	0.5
	<i>Rhamnus cathartica</i>	Purging buckthorn	40-60	BR	0.5
	<i>Salix viminalis</i>	Osier	40-60	BR	0.5
<i>Viburnum opulus</i>	Guelder rose	40-60	BR	0.5	
					100

22. The proposed species type reflects the previously agreed species as part of application approved Ref. 2019/2456/07, with the exception of Western Red Cedar. Trees will be spot sprayed with herbicide three times a year for the first three years to tackle weed growth. In addition, inter-row mowing will occur twice a year in spring and autumn if required. Trees and shrubs will be checked regularly with loose plants and stakes re-firmed and guards replaced as required. Beating up will occur for the first two years with the aim to restock to 95% of original stocking levels utilising species from the agreed mix, although replacements may not be like for like. Guards and stakes will be removed once they have served their purpose and the trees are established. This may be from year 5 onwards.

23. It should also be noted that the Woodland Creation and Management Plan has been updated to ensure that non-native species are not planted within 100m of the Gilwiskaw Brook.

Proposed Parkland

24. Surrounding the areas of woodland, parkland will be established throughout which there will be open public access. The existing grassland within the proposed parkland will be retained and managed to improve its species diversity. The grassland is likely to be initially maintained by cutting with the aspiration to have the area grazed once stock fencing of the planting areas and parkland copses is in place. Other parts of the NFC estate are grazed successfully, and they would look to replicate this here subject to finding a suitable grazier. Should the NFC not find a suitable grazier, grassland will be managed through hay crop mowing regime, with an early cut to remove winter growth and a second cut once wildflowers have set seed. The range of species for the individual trees proposed are listed in Table 2 below.

Table 2. Proposed tree species for the parkland areas.

Proposed parkland tree species	
Latin name	Common name
<i>Castanea sativa</i>	Sweet Chestnut
<i>Pinus sylvestris</i>	Scots Pine
<i>Crataegus monogyna</i>	Hawthorn
<i>Fagus sylvatica</i>	Beech
<i>Populus nigra var betulifolia</i>	Black poplar
<i>Pyrus cordata</i>	Pear
<i>Quercus palustris</i>	Pin oak
<i>Quercus robur</i>	Red oak
<i>Quercus rubra</i>	English Oak
<i>Salix alba</i>	White willow
<i>Tilia cordata</i>	Small leaved Lime

25. The proposed species are identical to those approved to be used in the eastern section of the site under application ref. 2019/2456/07. A broad range of trees are proposed to improve resilience to pests and diseases but also for aesthetic reasons. These trees will be planted as feathered stock within parkland tree crates to protect from grazing animals. Small areas of woodland planting will be included within the parkland to form copses. The same species mix would be used to achieve this, and these areas would be fenced to allow parkland to be used for grazing.

26. It should also be noted that the Woodland Creation and Management Plan has been amended to ensure that the proposed development retains and manages at least 25m of tussocky grassland around the two ponds on the western section of

the site. These two ponds are located to the north and north-west of the lake respectively.

Retained habitats and protected species

27. A substantial section of the site to the east of the Gilwiskaw Brook was not worked as part of the recent coaling operation but was retained as a mosaic of habitats which have developed on former colliery spoil. These primarily consist of areas of semi-improved grassland and woodland with a number of waterbodies also within this area. No works are proposed in this area, beyond the management of retained habitats.
28. Given the mosaic of habitats, lack of maintenance of these to date and presence of Great Crested Newts (identified in surveys submitted under condition 8 of permission Ref.2019/2456/07), the NFC has commissioned a 10-year Habitat Management Plan solely for the area of retained habitats, included as part of this submission (full details included in Habitat Management Plan, BSG Ecology, July 2020). The NFC proposes to manage this part of the site in accordance with this specialist Habitat Management Plan.

Ongoing management and aftercare

29. A series of tailored management and aftercare measures are proposed to accompany the proposed scheme to aid the newly created and retained habitats.

Variation of Conditions

30. In order to provide the proposed alternative woodland restoration scheme, it is proposed to vary the following conditions of planning permission 2019/2456/07:
- Condition 2, relating to the approved details;
 - Condition 15, relating to the approved restoration scheme;
 - Condition 16, relating to the construction of footpaths and bridleways;
 - Condition 17, relating to tree and shrub planting; and
 - Condition 22, relating to the approved aftercare schemes and implementation.
31. To allow the alternative restoration option to come forward the proposed variation to each condition is as follows;
- *Condition 2:* An amended wording of the condition is sought to allow either the approved existing restoration plan to remain in place for the western section of the site or to allow the alternative woodland design plan to be implemented instead to the western section of the site.
 - *Condition 15:* The condition from the extant planning permission enables the completion of the approved existing restoration plan (2013 application) or the recently approved woodland design plan to be undertaken either in accordance with the existing approved restoration and aftercare strategy and restoration plan or in accordance with the proposed woodland creation and management plan and woodland design plan respectively. This application seeks to vary part (b) of the condition to include reference to

the updated Woodland Creation and Management Plan and accompanying drawing.

- *Condition 16:* The condition from the extant permission refers to footpaths and bridleways set out in the Woodland Design Plan NFC01A, whilst this needs to be updated to reflect the new plan Ref. NFC03. It should be noted that no amendments are proposed to the previously agreed footpath and bridleway routes.
- *Condition 17:* The current condition refers to the Woodland Creation and Management Plan approved as part of application ref. 2019/2456/07, this needs to be updated to reflect details submitted as part of this application.
- *Condition 22:* This condition requires, in relation to the eastern section of the site, that the land is maintained in accordance with the Woodland Creation Management Plan and Design Plan submitted as part of application Ref. 2019/2456/07. This needs to be amended to reflect the current submission documents for the western part of the site.

32. It is also proposed to remove several conditions applied to application Ref. 2019/2456/07 which the applicant considers are not necessary now that the coal mining works have ceased. The conditions referenced are the following:

- Conditions 5, 6 and 7 relating to highways and access.
- Condition 9 relating to external lighting. There is no external lighting at the site and no proposals to erect any.
- Condition 10 relating to approved surface water drainage scheme. The works under the approved scheme have been completed and are no longer relevant to the restored site.
- Condition 11 & 12 relating to Water Management Plan and ongoing monitoring of this. The applicant understands that monitoring has been completed and the current owner will be making a submission to discharge this condition with regard to condition 12.
- Condition 13 relating to flood risk. The works under the approved scheme have been completed and are no longer relevant to the restored site.
- Condition 14 relating to compliant procedures for coal mining development. The applicant outlines this is no longer relevant following the cessation of the coal mining development.
- Condition 18 relates to post restoration monitoring for the re-establishment of shallow ground water. The applicant has noted that whilst it is their understanding that this has been addressed details are to be submitted by current owner to satisfy this condition.

Proposed supplemental legal agreement

33. The 2019/2456/07 permission includes a Deed of Variation which removes the eastern section of the site from various aspects of the S106 Agreement attached to the original planning permission Ref. 2009/0720/07. This application proposes a similar Deed of Variation which seeks to make the previous amendments to the legal agreement applicable to the western part of the site, with the exception of the storage lake.

34. The original planning application (2009/0720/07) is subject to a S106 Agreement which requires the transfer of part of the site, following restoration, to Leicestershire County Council. The agreement contains a plan (Plan 3) which shows the lake and surrounding land. The plan within the agreement was drawn at a time when a different crossing across the Gilwiskaw existed, to the north of the existing crossing. This application also seeks to vary the plan within the agreement so that a marginally smaller parcel of land is transferred to the County Council to allow access to the replacement bridge to fall outside of the transferred land. The NFC currently owns the eastern part of the bridge, the amendment to the plan would enable the NFC to purchase the western part of the bridge.

Planning Policy

35. The relevant local development plan policies are contained within the *Leicestershire Minerals and Waste Local Plan (Adopted September 2019)* and the *North West Leicestershire Local Plan (Adopted November 2017)*.

The Development Plan

36. The policies which are relevant to the determination of this application are as follows:

Leicestershire Minerals and Waste Local Plan (adopted September 2019)

- Policy DM1 (*Sustainable Development*);
- Policy DM2 (*Local Environment and Community Protection*);
- Policy DM3 (*Strategic Green Infrastructure*);
- Policy DM5 (*Landscape Impact*);
- Policy DM6 (*Soils*);
- Policy DM7 (*Sites of Biodiversity/Geodiversity Interest*);
- Policy DM8 (*Historic Environment*);
- Policy DM10 (*Public Rights of Way*);
- Policy DM11 (*Cumulative Impact*);
- Policy DM12 (*Restoration, Aftercare and After-use*)

North West Leicestershire Local Plan (Adopted November 2017)

- Policy S3 (*Countryside*);
- Policy Ec13 (*Tourism development*);
- Policy IF4 (*Transport Infrastructure and new development*);
- Policy En1 (*Nature Conservation*);
- Policy En2 (*River Mease Special Area of Conservation*);
- Policy En3 (*The National Forest*);
- Policy En5 (*Areas of Separation*);
- Policy En6 (*Land and Air Quality*);
- Policy He1 (*Conservation and enhancement of North West Leicestershire's historic environment*);
- Policy Cc2 (*Flood Risk*).

National Policy

National Planning Policy Framework (NPPF)

37. *The National Planning Policy Framework 2019 (NPPF)* sets out the Government's planning policies for England and is a material consideration in planning decisions. The NPPF advocates a presumption in favour of sustainable development at paragraph 11, and for decision-taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or,
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against NPPF policies.

38. Paragraph 205 advises that, when determining planning applications, Mineral Planning Authorities (MPAs) should ensure that: there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account any cumulative effects; any unavoidable noise, dust and particle emissions are controlled, mitigated or removed at source, and appropriate noise limits for extraction in proximity to noise sensitive properties are established; and restoration and aftercare are achieved at the earliest opportunity to high environmental standards.

39. Section 8 of the NPPF covers promoting healthy and safe communities. Paragraph 98 states that planning decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users by adding links to existing rights of way networks.

40. Section 14 of the NPPF covers flooding and climate change. Paragraph 163 relates to flood risk and seeks to ensure that this is not increased elsewhere from the effects of development.

41. Section 15 of the NPPF covers conserving and enhancing the natural environment. Paragraph 170 advises that planning decisions should: contribute to and enhance the natural and local environment by: recognising the intrinsic character and beauty of the countryside, and the benefits of the best and most versatile agricultural land, trees and woodland; minimising impacts on and providing net gains for biodiversity by establishing coherent ecological networks; and preventing unacceptable levels of pollution.

Planning Practice Guidance (PPG)

42. Planning Practice Guidance (PPG) provides additional guidance to ensure the effective implementation of the national policy set out in the NPPF in relation to mineral extraction. It identifies the principal issues to be addressed including the following relevant matters: noise, dust, air quality, lighting, landscape and visual impact, heritage features, flood risk, ecology, restoration and aftercare. The PPG seeks to implement the NPPF requirements to provide for the restoration and aftercare of mineral sites at the earliest opportunity, carried out to high

environmental standards. It advises on the use of a landscape strategy, reclamation conditions and aftercare schemes to achieve the desired after-use of the site following working.

Consultations

43. **North West Leicestershire District Council Planning** – No objection.

44. **Measham Parish Council** – Support the application but has requested that some modest additions are included as part of the application submission.

45. The Parish Council has requested that an entrance to the site from Swebstone Road is to be included, whilst also extending the footpath to the bridleway. The Parish Council has also requested that some parking bays are to be included at the application site (including 1 disabled parking bay) to ensure that grass verges are not spoiled by visitor parking. These comments are considered in “Other Issues” section of the report (paragraphs 97-102).

46. **Swebstone Parish Council** – no comments received.

47. **Forest & Measham ED Mr. S. D. Sheahan CC** – Initial comments requesting that the application is brought to DCRB as the site generates a significant amount of public interest for which the delegation to officers would not facilitate the appropriate level of engagement.

Additional comments have been provided by Mr. Sheahan CC outlining his support for the comments received by the public in relation to the provision of on-site parking and that the drainage problems are addressed in order to avoid waterlogged paths. Mr Sheahan would support the idea of linking Footpath P85 to the site at the Gilwiskaw Bridge at Bosworth Road as the route is now fully open. It also noted that the idea of a connection from the south-western corner of the site by the crossroads has merit but understands there may be road safety concerns.

48. **Ecology (Leicestershire County Council)** – Initial comments provided outlined that there are no objections in principle however further details in relation to the approach to protected species for the land west of the brook needs to be submitted and agreed up front.

The applicant subsequently submitted a revised Design Plan to increase widths of rides through the western section of the site to increase the proportion of grassland and create more woodland edge. It also increased the area of grassland to the north of the lake. The Woodland Creation and Management Plan has been amended to include a commitment not to plant non-native species within 100m of the brook and to retain and manage at least 25m of tussocky grassland around the two ponds on the western section of the site. LCC Ecology has reviewed this information and stated that they have no objections subject to conditions regarding precautionary working for Great Crested Newts, and the submission of habitat management plan, with an increased scope pertaining to the western section of the site.

49. **Natural England** – No objection.

50. Based on the plans and documents submitted Natural England have concluded that the proposal would not have a significant effect on the River Mease Special Area of Conservation as the proposed planting of trees will not lead to harmful discharges of foul or surface water from the application site into the River Mease SAC or its tributaries.
51. **Landscape (Leicestershire County Council)** – No objection.
52. Landscape Officers have reviewed the submitted plans and documents and noted that the proposed tree and shrub species (Condition 17) to be planted are the same as the approved planting mix on the east part of the site with the inclusion of a conifer Western Red Cedar. Thus, they are satisfied that the proposal is in accordance with national policy on forestry and increasing biodiversity and the Leicestershire Minerals and Waste Local Plan.
53. **Lead Local Flood Authority (Leicestershire County Council)** - No objection following clarification that Conditions 10 and 13 of application Ref. 2019/2456/07 (2019/VOCM/0283/LCC) are not proposed to be varied or removed as part of the application.
54. **Environment Agency** – No objection subject to conditions.
55. **Highways** – No objection.
56. **Highways and Public Rights of Way (Leicestershire County Council)** – No objection.
57. **Heritage (Leicestershire County Council)** – No objection.
58. Heritage officers have reviewed the submitted information and outlined that given the intention is to follow closely the approved planting scheme on another part of the site and the previous mining activity they do not anticipate that the application will have negative implications for the built historic environment.
59. **Historic England** – No comment.

Publicity and Representations

60. The application has been publicised by means of site notices, press notice and neighbour notification letters sent to the nearest occupiers in accordance with the County Council's adopted Statement of Community Involvement.

Representations Received

61. Two members of the public have submitted comments. Suggestions have been made to enhance the scheme from their point of view as follows:
- a) The application site is located in area where there are currently several horse-riding opportunities (Temp Farm, Jubilee Wood, Quarry Lane and several nearby bridleways). It is suggested that additional bridleways and connectivity/links between the sites should be investigated, in particular the creation of a bridleway to Q33.

- b) Given that the site provides good views of the Winter Storage Lake it could be beneficial to provide a suitable viewing point close to the lake for birdwatchers.
- c) Given that the highway adjacent to the site, Bosworth Road, is relatively narrow it is suggested that the applicant is asked to provide a suitable car park within the site to incorporate the necessary security features. This may also be required as the site could be popular from the outset.
- d) There are several bridleways which are isolated in this area of the site and it could be beneficial if LCC's rights of way team could explore the possibility of these being connected, with the most pressing of these being a possible link between Q55 and Q56 (part footpath and part bridleway).
- e) Footpaths have been given more consideration within the proposal than multi-use tracks and given that the National Forest is having increased visitors each year there is increased pressure on existing rights of way, causing division between the various users. The provision of a network of multi-use tracks is the main solution, working in concert with neighbouring landowners.
- f) A surfaced all ability path should be developed which provides views of the Winter Storage Lake as well as the forested areas, whilst a number of seats should be made available and consideration given to planting a small copse of American Red Wood Trees.
- g) UK Coal's ecological commitments should be enforced by the Regulatory board. The main concern relates to the provision of a Sand Martin Wall on the Winter Storage Lake and the completion of this prior to any change in ownership.
- h) The local community should be involved in the undertaking of tree planting events and setting up of watch groups.

62. The issues raised above are considered in the Assessment of Proposal section of this report.

Assessment of Proposal

Principle of the Development

63. This application should be determined in accordance with the development plan unless material considerations indicate otherwise. The relevant considerations in determining the acceptability of this proposal are the nature of the development, ecology and biodiversity, landscape, heritage and environmental impacts including impacts on international and nationally designated sites of biodiversity interest and conservation value; and the ongoing aftercare and habitat management of the site.

64. This application seeks to amend the approved restoration scheme and aftercare requirements for the western section of the site, with the exception of the winter storage lake and part of its immediate surrounds, which are currently secured by planning conditions and legal agreements. The proposed amendments would

allow an optional restoration scheme to come forward on a parcel of land to the west of the Gilwiskaw Brook. The proposed optional scheme would allow for the creation of a new National Forest woodland site comprised of a combination of woodland plantations and parkland. This would facilitate a comprehensive connected scheme across the whole former Minorca coalmine site following the implementation of application ref. 2019/2456/07 on the eastern section of the site.

65. It is sought to vary planning conditions attached to the existing planning permission to allow the woodland proposals to be implemented. It is proposed that the wording of the varied planning conditions would allow the existing, approved restoration and aftercare requirements to remain in place. This would allow a 'fall-back' position so that existing requirements would continue to remain enforceable, if required.
66. Policy DM12 supports restoration where there would be a net gain in biodiversity. For those sites greater than 10 hectares, proposals should provide for a mosaic of priority habitats as set out in the Leicester, Leicestershire and Rutland Biodiversity Action Plan and should attain a significant net gain in biodiversity. In the National Forest, native deciduous woodland is a priority habitat sought as an after-use for restoration of mineral sites. Additionally, wet woodland within river floodplains is also identified as a priority habitat for the County. Policy DM12 states that sites should be restored with consideration to its setting so that opportunities are taken to create, protect and enhance biodiversity, green and blue infrastructure networks and the restored landscape reflects the local character of the area. Restored sites are expected to take all possible opportunities to maximise public access and improve the public rights of way network. Overall, it is considered that the principle of the development is in accordance with policy DM12. Additionally, it is considered that the proposal is in accordance with policies En1, En3 and DM3.

Landscape and Visual Impact

67. It is considered that the proposal would enhance the local environment and landscape, which would increase the attractiveness of the district to local residents and to visitors. The scale of the development would be appropriate to the local landscape and its location within the National Forest. Policy Ec13 and En3 support working with the National Forest Company in relation to opportunities for enhancing the woodland economy and creating attractive sustainable environments. Given that the existing restoration to the western section of the site comprises predominantly agricultural land, the creation of a well-designed and comprehensive area of woodland and parkland, linking to the east of the site, would create an area of significantly enhanced landscape and visual benefits from the existing use.

Therefore, it is considered that the proposal would contribute positively to the character and quality of the area in which it is located and contains ample provision for new woodland and parkland. The proposal would not result in unacceptable impacts from bird strikes, dust, emissions, flooding, illumination, noise, odour, run-off, traffic, vibration or visual intrusion to adjoining land uses and users and those in close proximity to the development. The proposal accords with policies DM2, DM5, En6 and Ec13.

Ecology and Biodiversity

68. The Gilwiskaw Brook which runs through the centre of the site forms part of the River Mease SSSI and the River Mease Special Area of Conservation (SAC). The River Mease is classified on the basis of; floating formations of water crowfoot (*Ranunculus*), populations of bullhead (*Cottus gobio*); populations of spined loach (*Cobitis taenia*) and populations of white-clawed crayfish (*Austropotamobius pallipes*). The river and adjoining land is classified for its habitat for populations of otter (*Lutra lutra*).
69. The proposed development would remove the majority of the area to the west of the Gilwiskaw Brook from agricultural use and creates a mixture of woodland and parkland which would connect with the east of the site, thus creating a comprehensive area of woodland and parkland.
70. The proposals have been assessed in accordance with Part 6 (Regulations 63 and 64) of the Conservation of Habitats and Species Regulations 2017 as set out in Appendix A of this report. The proposal is unlikely to significantly affect the features for which the site is classified as a SAC. It is considered that there would be no significant cumulative impacts with other developments in the SAC catchment. Natural England has assessed the application and considers that the proposed development will not have significant adverse impacts on designated sites and has no objection. Overall, it is considered that the proposal would not have significant effects on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI.
71. With regards to protected species, there are known populations of Great Crested Newts (GCNs) on the site. Within the Woodland Creation and Management Plan submitted in the previously approved application (Ref. 2019/2456/07), the NFC proposed to appoint a consultant to undertake Great Crested Newt surveys to inform the later submission of a 10-year programme of management operations. These surveys have been submitted identifying the presence of GCNs in 4 out of 5 of the ponds. Given the mosaic of habitats across the site, the lack of maintenance and the presence of GCNs the application has submitted a 10-year Habitat Management Plan to accompany this application. This includes the retention and establishment of high-quality ponds of varying depths and sizes to provide optimal conditions for populations of breeding great crested newt. It also includes the creation of hibernaculum/refuge for amphibians and reptiles within the grassland and management of the open mosaic habitat. The above information mainly relates to the eastern section of the site. LCC Ecology has requested that an updated Habitat Management Plan, with a wider scope to provide more details pertaining to the western section of the site, is to be secured by way of condition.
72. As a result of comments raised during the initial consultation process by LCC Ecology, the permissive routes through the woodland to the western section of the site have been increased in width to increase the proportion of grassland more woodland edge. The area of grassland to the north of the lake has also been modestly increased. The Woodland Creation and Management Plan has also been updated to ensure not to plant non-native species within 100m of Gilwiskaw Brook and to retain and manage 25m of tussocky grassland around the two ponds on the western section of the site. These amendments are supported by LCC Ecology and they have no objections with regard to ecological

considerations subject to the imposition of conditions relating to precautionary working for GCNs, and the submission of a habitat management plan.

73. The ongoing management and aftercare of the site must also be considered. The site has existing planning conditions and legal agreements which outline ongoing requirements for habitat management and enhancement on the site in relation to the existing approved scheme. On the previously approved application Ref. 2019/2456/07 it was agreed that a new legal agreement be issued so that the land to the east of the Brook is released from its legal obligations to undertake those habitat management and aftercare works tailored to the original restoration scheme. The planning conditions which were imposed on this application were amended to require the applicant to either follow the existing approved aftercare and habitat management plans or follow the management measures detailed within that planning application. This would allow appropriate aftercare and management works on the site to be undertaken on both halves of the site. Each half of the site would have differing management needs which would be controlled by planning condition. Although the land to the east of the Brook, following implementation of application Ref. 2019/2456/07, has been released from its aftercare and management obligations by way of legal agreement, these requirements are now controlled by planning conditions.
74. The same approach is proposed to be taken in relation to the amended restoration option to the western section of the site. The planning conditions proposed on this application are to be amended to require the applicant to either follow the existing approved aftercare and habitat management plans or follow the management measures detailed within that planning application. This would allow appropriate aftercare and management works on the site to be undertaken on both halves of the site or the entirety of the site if this permission is implemented. If this permission is not implemented each half of the site would have differing management needs which would be covered by way of planning condition.
75. Paragraph 205 of the NPPF states that when determining planning applications mineral planning authorities should provide for restoration and aftercare at the earliest opportunity, to be carried out to high environmental standards, through the application of appropriate conditions. Condition 8 of Planning permission 2013/0986/07 required restoration works on the site to be completed no later than 6th June 2017. Whilst the site has been restored, it is now proposed to alter a substantial portion of that approved restoration scheme. In the interests of ensuring that the land is restored and in aftercare at the earliest opportunity a condition can be imposed to require the applicant to achieve the revised restoration scheme within three years from the date of commencement. This would allow the applicant sufficient time to obtain grant funding for the tree planting works and complete the necessary land ownership issues prior to commencement and post commencement, would then allow sufficient time for completion of the revised restoration scheme and aftercare works at the earliest opportunity, in accordance with paragraph 205 of the NPPF.
76. Subject to the imposition of the above recommended conditions, the proposal meets policies DM3; DM7; En1; En2; En3; En5 and paragraphs 170 and 205 of the NPPF.

Heritage

77. The main visual impact of the proposal would be the planting of woodland and parkland to the application site. LCC Heritage Officers have reviewed the scheme and they outlined that that have no concerns with the proposed revised restoration scheme. Thus, it is considered that the proposed development would not have a detrimental impact to the significance of any heritage asset or its setting. Therefore, the proposal is found to accord with policies DM8 and He1.

Traffic, Access and Parking

78. The proposed amended restoration plan does not include any car parking area, nor does it create any new public vehicular access, the same as the previously approved application to the eastern section of the site Ref. 2019/2456/07. The National Forest have outlined that the application site *“has been designed for low level use by local residents. It is one of hundreds of accessible woodlands across the Forest close to where people live which helps to reduce the need to travel. Should people wish to access woodlands by car they can visit Queen Elizabeth Diamond Jubilee Woodland, Sense Valley or Hicks Lodge for example, which are all within 5 miles or 10 minutes’ drive. All those sites are ‘destination woodlands’ and include facilities such as surfaced paths, toilets and car parks. The application site will not be heavily promoted, and only low-level use is expected”*.

79. The Highways Authority has reviewed the proposed development and outlined that they have no objections to the proposed amended restoration scheme and accompanying conditions varied. Given the nature of the proposed use, there is no policy basis to require off-street car parking to serve the site. It is therefore considered that the proposed development would not have a detrimental impact upon the highway safety.

Public Rights of Way

80. Bridleway Q33 runs north-south through the eastern half of the application site. The previously approved application Ref. 2019/2456/07 included the original requirement to dedicate a bridleway which is to run east to west from Bridleway Q33 joining the existing Footpath O57 to the east. However, it removed the requirement to dedicate a footpath which would trend from east to west and link Bridleway Q33 to land to the west of the Brook. The current application would re-instate a footpath that would connect through the east and the west of the site centrally, linking bridleway Q33 to the western section of the site. It is proposed to create a new woodland and sections of parkland to the west of the Gilwiskaw Brook in place of the existing agricultural land which would have open public access through the formation of a network of permissive paths with access from Bosworth Road and Swepstone Road. This would result in a net gain for public access to the site.

81. The previously approved scheme Ref. 2019/2456/07 included condition 16 that required the applicant to construct and dedicate the bridleway and footpath links on the site within nine months of the commencement of development. Given that this time period has not elapsed, and the proposed amended restoration scheme includes a new design plan for the west of the site, a similar condition is to be imposed on this application. Overall, the proposal would result in a net gain in public access to the site and the Public Rights of Way team (Leicestershire

County Council) have no objections to the proposal. Subject to the recommended condition, the development is acceptable in terms of effects on the rights of way network and the users of the routes, in accordance with policies DM10, IF4 and paragraph 98 of the NPPF

Flood Risk

82. The majority of the site lies outside of any flood zone. However, a small strip of land which follows the Gilwiskaw Brook falls within Flood Zone 3. Additionally, a strip of land which runs along an unnamed tributary which crosses the eastern half of the site also lies within Flood Zones 2 and 3. This means that these areas have a high probability of flooding, having a 1 in 100, or greater (Flood Zone 3) or between 1 in 100 and 1 in 1,000 (Flood Zone 2) annual probability of river flooding. No changes to the topography or existing drainage of the site are proposed.
83. The applicant has noted during the current application that there are still ongoing issues in relation to de-culverting the tributary to the east of the site, which causes some localised flooding. This has been observed by LCC Planning Officers carrying out annual site monitoring visit. It had been suggested by the applicant that the wording of this condition be varied to enable a new scheme to come forward. However, the Environment Agency reviewed this information and noted that further information in relation to the implementation of the scheme would be required to enable this. It is understood that NFC are exploring an alternate scheme and will submit a planning application to vary these details to rectify any issues with the currently approved scheme. It is therefore appropriate to re-impose the condition on this application.
84. The EA and Lead Local Flood Authority have reviewed the proposed amended plans to the western section of the site, and both have stated that they have no concerns in relation to flood risk matters arising from the proposed revised restoration scheme. The EA has requested that a condition is included to ensure the details of footpaths to be constructed to the west of the Brook are submitted however the NFC have outlined that there is nothing proposed to be constructed. It is a grass path which is proposed and there is nothing to do to facilitate this other than to cut the grass. Therefore, it is considered that such a condition is not considered necessary and the County Planning Authority are awaiting the response of the EA to this.
85. In relation to the potential removal of Conditions 11, 12 and 18 of application ref. 2019/2456/07, the EA have noted that information relating to water management was submitted in 2017. This information indicated that groundwater levels had largely rebounded, groundwater flow was apparently re-establishing, and post restoration groundwater quality monitoring had not identified any adverse impacts that could be attributed to the site. However, further information has not been submitted in relation to the above conditions and the EA have noted they would welcome the opportunity to review the further data referenced. Regarding the comments from the EA, there is ongoing correspondence seeking clarification over the ongoing necessity for these conditions. The LLFA has no objections provided conditions 10 and 13 of application Ref. 2019/2456/07 are not to be varied.

86. Given that the proposals do not include any intention to alter culverts or water flows, it is not considered that there would be any adverse effect on flood risk or surface water drainage as a result of the proposed development. Therefore, there would be no unacceptable impacts on flood risk, surface water drainage and management from the proposed amended restoration scheme.
87. Given the above, it is considered that the proposal accords with policy Cc2 and paragraph 163 of the NPPF.

Soils

88. The proposed woodland led-restoration scheme on the western half of the site, in place of the approved agricultural use of the land would provide an opportunity to enhance the soils and enable habitat creation. Additionally, the existing use of the land, grazing, is intended be used for the existing grassland in the proposed parkland provided a suitable grazer can be found. Therefore, the proposal accords with policy DM6.

Legal Agreement

89. The original S106 agreement for the site, dated 25th June 2011 accompanied the 2009/0720/07 planning permission (Extraction of coal and fireclay by surface mine methods and restoration to agriculture, woodland and nature conservation). It includes clauses in respect of the restoration of the site in accordance with the Habitat Management Plan and the 20 Year Enhancement Plan; the dedication of public rights of way; vehicle routeing, the convening of the liaison committee amongst other operational matters. This agreement also requires the landowner to transfer the freehold interest in the Winter Water Storage Lake to the Council at the consideration of one pound, following the expiry of the period stated in any aftercare condition on the site. This date has not yet been met. Additionally, the agreement secured community fund and restoration bond monies.
90. A supplemental legal agreement dated 9th October 2014 accompanied the 2013/0986/07 planning permission (Application to vary conditions 1, 3, 5, 11, 27, 38, 44 and 96 of planning permission 2009/0720/07 at the existing Minorca Surface Mine site). This agreement includes provisions in respect of the liaison committee, the community fund, and a revised bond table for the restoration and aftercare bond.
91. The 2019/2456/07 permission includes a further Deed of Variation which removes Minorca East from various aspects of the s106 Agreement attached to 2009/0720/07. This application proposes a similar Deed of Variation which seeks to make the previous variations also apply to Minorca West, with the exception of the storage lake.
92. As noted above, the original planning application (2009/0720/07) is subject to a s106 Agreement which requires the transfer of part of the site, following restoration, to Leicestershire County Council. The agreement contains a plan (Plan 3) which shows this concerns the lake and surrounding land. The plan within the agreement was drawn at a time when a different crossing across the Gilwiskaw existed, to the north of the existing crossing. This application also seeks to vary the plan within the agreement so that a marginally smaller parcel of land is transferred to the County Council to allow access to the replacement

bridge to fall outside of the transferred land. The NFC already owns the eastern part of the bridge, the amendment to the plan will allow the NFC to purchase the western part of the bridge. Consultees have raised no concerns in relation to alteration of the section of land to be transferred.

93. Any grant of planning permission for the proposed development would be subject to the prior completion of a legal agreement and planning conditions.

Removal of unnecessary conditions

94. Condition 9 of application Ref. 2019/2456/07 relates to external lighting and potential impacts upon surrounding residential amenity. It is noted that there is no external lighting proposed and there is no external lighting on the application site, east or west, currently. Given the stage of aftercare that the application site is at and that the condition mainly related to the coal mining development it is considered that this condition is no longer necessary.
95. Similarly, condition 14 relates to complaints procedures which was attached to the original permission in relation to the coal mining development. Given that this has now ceased and the nature of the site currently, this condition is also considered to not be necessary.
96. Regarding Conditions 5-7 of application Ref. 2019/2456/07, these relate to drainage at access and exit points, turning facilities being maintained within the site and the maintenance of hard bound material to the access. These conditions were included in relation to the coal mining development to ensure that there were no detrimental impacts upon highways safety. Given that the coal mining operation has ceased and that the access has been re-instated LCC Highways have no objection to these conditions being removed as they are no longer necessary.

Other Issues

97. As has been noted in paragraphs 45 and 61 of this report there have been representations received, including Measham Parish Council, which have outlined amendments which are believed could be carried out to enhance the proposed alternative restoration. These comments relate primarily in relation to the potential connectivity of the application site to wider amenities and area, use of multi-surface tracks, provision of car parking and additional facilities on the site and drainage issues. It should be noted that there have been no objections from any technical consultees in relation to any of the issues raised by the interested parties.
98. Notwithstanding the above, the suggestions noted in the above comments were referred to the NFC for their consideration, whilst correspondence was also undertaken with LCC PROW team and the Highways Authority. The NFC have noted that the application includes all the agreed footpath and bridleway connections from the UK Coal restoration scheme plus extensive permissive routes through the woodlands connecting to all adjoining public rights of way. It also includes a bridleway connection from the boundary to Wynns Wood to Q33. In relation to other connection points (Ashby canal to the south and Tempe Farm) the NFC are concerned in relation to the junction at the south-west of the site and

the speeds at which cars travel along Swepstone Road, thus they are unable to provide additional connections at this time.

99. In relation to comments received with regard to viewing platforms and benches for birdwatchers and site users, the NFC has stated that the section of land immediately around the lake does not form part of this application as the NFC are not seeking to acquire this. However, the nearest part of the application site to the lake has been left as open ground to enable views of the lake, whilst there is no intention at present for the NFC to provide infrastructure on site. They have advised that these facilities were not included with the UK Coal scheme and that the current proposal enables public access closer to the lake, which would be more beneficial than the existing restoration scheme.

100. In relation to comments received with regard to provision of car parking, also referred to by Measham Parish Council and Mr. Sheahan CC, the NFC has stated that the site is designed for low level use by local residents and is one of a substantial number of accessible woodlands across the Forest close to where people live which helps to reduce travel. The NFC has advised that there are a number of “destination woodlands” within relative close proximity to the application site (Queen Elizabeth Woodlands, Sense Valley and Hicks Lodge) that can be accessed by car, whilst the application site is not intended to be heavily promoted with low level use expected. LCC Highways has stated that there is no requirement for on-site parking provision. This aligns with adopted policies which do not require off-street car parking for a restoration scheme of this type.

101. The NFC has advised that in relation to comments concerning ecology, the submitted Woodland Creation and Management Plan and Habitat Enhancement Plan have taken the UK Coal proposals and adapted them to the habitats that they are creating. These are already approved for the eastern part of the site and are proposed to be replicated on the west. Following the submission of additional information LCC Ecology has no concerns in relation to ecological considerations.

102. In relation to comments received with regard to connectivity, bridleways and public rights of way, the views of LCC PROW team have been sought. They have noted that during the development of the original restoration plan the suggestion was made to create additional bridleways across the site, one exiting onto Gallows Lane and the other onto Swepstone Road. Both suggestions were dismissed following health and safety considerations. They have noted that a bridleway is to be created from the site through Wynns Wood to Swepstone. In relation to other comments provided they have stated this is for the applicant to consider. However, the PROW team raises no concerns with what has been proposed by the applicant.

Conclusion

103. By reason of the above assessment, the proposal is in accordance with the development plan. In particular, policy DM7 which requires all proposals for mineral development to contribute to and enhance the natural and local environment by taking all opportunities to provide a net gain in biodiversity without having an adverse effect on internationally and nationally important sites of biodiversity conservation and policy DM12 which secures the satisfactory reclamation and after-use of mineral sites. Overall, the proposal would make a positive contribution to reducing the effects of climate change. It is considered

that the proposed creation of a comprehensive woodland and parkland development across the entirety of the former coal mine would significantly improve the natural environment. The proposal has also been assessed against national planning policies and guidance contained in NPPF and PPG and is considered to reflect the principles of sustainable development.

104. The recommended planning obligations and planning conditions would help to mitigate against the impacts of the development and on this basis, the proposed development would be acceptable.
105. The protection of the River Mease SSSI, SAC and the Gilwiskaw Brook is an important consideration. Natural England is satisfied that the development can be undertaken without any significant impacts on both ecological assets. This has been concluded within the Habitat Regulations Appropriate Assessment (see Appendix A).

Statement of Positive and Proactive Engagement

106. In determining this application, the Minerals Planning Authority has worked positively and proactively with the applicant by entering into pre-application discussion; assessing the proposals against relevant Development Plan policies; all material considerations; consultation responses and valid representations received. Issues of concern have been raised with the applicant and addressed through negotiation and acceptable amendments to the proposals and discussion with the applicant has taken place in relation to restoration design suggestions received during the consultation process. This approach has been in accordance with the requirement set out in the National Planning Policy Framework.

Recommendation

1. PERMIT subject to the conditions set out in Appendix B and the prior completion of a S106 legal agreement covering aftercare and management responsibilities on the site, land surrounding the winter storage lake and an amended arrangement for the retention of the restoration bond.

Officer to Contact

Brian O' Donovan (Tel: 0116 305 1085)
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APPENDIX A

Habitats Regulations Assessment

Part 6 (Regulations 63 and 64) of The Conservation of Habitats and Species Regulations 2017 (as amended)

PROJECT: Application to vary conditions attached to planning permission Ref. 2019/2456/07 to enable alterations to restoration scheme(2020/VOCM/0172/LCC) – Former Minorca Surface Mine, Bosworth Road, Measham.

Location and Description of Proposal

UK Coal Ltd submitted a planning application in July 2009 (2009/0720/07) for the extraction of coal and fireclay and subsequent restoration to agriculture, woodland and nature conservation on land to the east of Gallows Lane and between Swebstone Road and Bosworth Road, between the villages of Measham and Swebstone. In June 2011, the Development Control and Regulatory Board resolved to grant permission subject to conditions and a S106 legal agreement. The site was known as the Minorca Surface Mine and the first coal was extracted in October of 2012.

In 2013, planning permission was granted for an extension to the Minorca Surface Mine for the demolition of a farmhouse and agricultural buildings and the extraction of coal and fireclay by surface mine methods with restoration to agricultural dwelling, agriculture and nature conservation (2013/0983/07). In 2013 planning permission was also granted to vary conditions attached to permission no. 2009/0720/07 (2013/0986/07) to allow the extraction to take place.

The site was fully restored on the 30th June 2017 back to its current landform, as per the approved plans. The site is currently in its third year of aftercare. The site is required to undertake numerous and different aftercare and management requirements each year. At present, several of the aftercare works have been completed on the site. The National Forest Company (NFC) submitted a variation of condition planning application Ref. 2019/2456/07) in December 2019 to enable an amended restoration scheme to be an option for the eastern parcel of the site (conditions to be varied were from application Ref.2013/0986/07). In March 2020, DCRB recommended approval subject to conditions and a s106 legal agreement and a grant of planning permission was issued on 30th April 2020.

The approved optional amended restoration scheme to the eastern section of the site includes an open public access woodland, through the incorporation of the existing public rights of way which cross the site, the creation of new public rights of way and the formation of a network of permissive paths. It also includes the expansion of the new woodland created on the site from 5ha to approximately 30ha, when compared to the approved restoration plan Drawing No. 193D03D (Application Ref. 2013/0986/07). The new woodland would be planted in place of the existing agricultural land on this parcel of land. This amended restoration scheme was implemented on 12th October 2020 (as confirmed by the NFC), with this parcel of land now being owned and managed by the NFC. The ongoing management and

enhancement requirements are controlled by way of planning conditions included as part of the approval Ref. 2019/2456/07.

The land to the west of the Gilwiskaw Brook, which has been restored back to agriculture and is currently in its third year of aftercare, remained undisturbed as part of application Ref. 2019/2456/07. Thus, the ongoing management and enhancement requirements are still be in place and enforceable for that parcel of land to the west of the Gilwiskaw Brook as per planning application Ref. 2013/0986/07.

This proposal is seeking an optional amended restoration plan for the western half of the site, which lies to the west of the Gilwiskaw Brook. It is not proposed to amend the approved restoration or aftercare details on the parcel of land to the east of the Brook recently approved ref. 2019/2456/07 or in relation to the winter water storage lake and a section of land immediately surrounding it.

Interest Features

The River Mease Special Area of Conservation (SAC) is classified on the basis of:

- Floating formations of water crowfoot (*Ranunculus*) of plain and sub-mountainous rivers;
- Populations of bullhead (*Cottus gobio*);
- Populations of spined loach (*Cobitis taenia*);
- Populations of white-clawed crayfish (*Austropotamobius pallipes*);

And the river and adjoining land as habitat for:

- Populations of otter (*Lutra lutra*)

Is the proposal directly connected with or necessary to management of the site for nature conservation?

The project is connected with or necessary to the management of the site for nature conservation purposes. A Habitats Regulation Assessment has therefore been undertaken to assess the implications of the project in view of the site's conservation objectives.

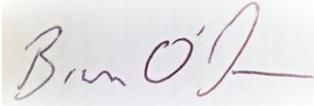
Significance Test and Assessment of implications of the proposal on the integrity of the European Site

The River Mease SSSI/SAC runs through the centre of the site. The proposal would not result in any harmful discharges from the application site into the River Mease and the increased tree planting would help attenuate surface flows within the site. Therefore, the proposal alone is unlikely to significantly affect the features for which the site is classified as a SAC. It was noted within application Ref. 2019/2456/07 that there are good opportunities to provide natural flood management to benefit the River Mease SSSI/SAC further downstream. Therefore, it is considered that there would be no significant cumulative impacts with other developments in the SAC catchment. Natural England (the appropriate nature conservation body) has assessed the application. They have considered that no mitigation measures are needed to make the development acceptable, nor have any general concerns with the proposal. Therefore, it is considered that no Appropriate Assessment is required in this instance.

Conclusion

Overall, it is considered that the proposal would not have significant effects on the internationally important interest features of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI and in this case an Appropriate Assessment is not required.

Signed:

Date: 20th January 2021

Conditions**Definition of the Development**

1. This permission shall relate only to the restoration of the former coal workings to agriculture, grassland, woodland, wetland and water features within the land edged red on Plan No. 193 D02b dated 18th November 2013.

Reason: For the avoidance of doubt, and to ensure that the development is carried out in accordance with the approved conditions and in a satisfactory manner in the interests of the amenity of the area.

2. Unless otherwise required by this permission or approved in writing by the County Planning Authority, the development shall be carried out in accordance with the following details:
 - a) Plans and documents submitted as part of application Ref. 2019/2456/07 for land to the east of the Gilwiskaw Brook; and

For land west of the Brook either:

- b) the application and accompanying environmental statement dated June 2009 and addendum to the Environmental Statement dated July 2010, as amended by the application documents and ES addendum submitted with planning application number 2013/0986/07; or
- c) the application and accompanying environmental statement dated June 2009 and addendum to the Environmental Statement dated July 2010, as amended by the application documents and ES addendum submitted with planning application number 2013/0986/07, as amended by the application and accompanying plans and documents submitted with planning application number 2020/1838/07 relating to the land to the west of Gilwiskaw Brook but excluding the winter storage lake and land immediately to its surround;

together with such other details as may be submitted to and approved by the County Planning Authority in accordance with these conditions

Reason: For the avoidance of doubt, and to ensure that the development is carried out in accordance with the approved conditions and in a satisfactory manner in the interests of the amenity of the area.

Commencement and Duration

3. The development option as set out in Condition 2c shall be commenced within 2 years of the date of this permission. Written notification of the commencement of the development shall be provided to the County Planning Authority within seven days from the date of the commencement.

Reason: To ensure the reclamation of worked land at the earliest opportunity in line with paragraph 204 of the National Planning Policy Framework and in the interest of the amenities of the area.

4. The site shall be fully restored by no later than three years from the date of:
 - a) this permission, with respect to Condition 2b; or
 - b) the date of commencement of development option 2c, as notified under Condition 2.

Reason: To ensure the reclamation of worked land at the earliest opportunity in line with paragraph 204 of the National Planning Policy Framework and in the interest of the amenities of the area.

Protected Species

5. Prior to the commencement of development on land to the west of the Gilwiskaw Brook, a precautionary working statement for Great Crested Newts is to be submitted to and approved in writing by the County Planning Authority

Reason: In the interests of wildlife protection.

6. Prior to the commencement of development on land to the west of Gilwiskaw Brook, an updated Habitat Management Plan to include retained habitats to the west of Gilwiskaw Brook, is to be submitted to and approved in writing by the County Planning Authority.

Reason: In the interests of wildlife protection.

Drainage and Water Protection

7. The development hereby approved shall not be carried out except in accordance with the surface water drainage scheme approved under Condition 69 of planning permission ref. 2009/0720/07.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity and ensure future maintenance of the surface water drainage system.

8. The development hereby approved shall be carried out in accordance with the Water Management Plan (as subsequently updated) approved under Condition 70 of planning permission ref. 2009/0720/07.

Reason: To protect the water environment and ensure adequate reporting of the monitoring results takes place.

9. All environmental data collected by virtue of the Water Management Plan referred to in Condition 19 above shall be submitted in the form of an electronic report to the County Planning Authority on a bi-annual basis commencing with the date of this permission. An additional full interpretive report, including digital data files, graphs, charts, maps and plans as appropriate should be submitted to the County Planning Authority within one month of each annual anniversary of the date of this decision.

Reason: To protect the water environment and ensure adequate reporting of the monitoring results takes place.

10. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Envelope Assessment (FEA) and Water Management Plan (WMP) dated July 2010 and October 2012 respectively and undertaken by Wardell Armstrong and the following mitigation measures detailed within the FEA and Water Management Plan (as updated) submitted with planning application ref. 2009/0720/07:

1. WMP Section 3. Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 20% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

2. FEA Section 5.2.7. Provision of a replacement bridge crossing to the Gilwiskaw Brook within the site to a 100 year plus 20% (for climate change) standard.

3. FEA Section 5.2.3. Replacement Bridge abutments to be set outside of the 100 year flood plain envelope.

4. FEA Section 5.2.4 Replacement Bridge soffit is set no lower than 86.971m above Ordnance Datum (AOD).

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.

Restoration

11. All restoration works on the land to the east of the Gilwiskaw Brook shall be undertaken in accordance with the Woodland Creation and Management Plan and Woodland Design Plan NFC01A and dated February 2020.

All restoration works on the land to the west of the Gilwiskaw Brook shall be undertaken in accordance with either:

- a) the approved Restoration and Aftercare Strategy and Restoration Plan 193D03e; or
- b) in accordance with the Woodland Creation and Management Plan (Revised February 2021) and Woodland Design Plan NFC03A and dated January 2021.

Reason: To ensure that the operational site areas are restored in an orderly manner and to a condition capable of beneficial after-use.

12. The construction and surfacing for those footpaths and bridleways which are to be dedicated as part of the restoration works to the west of the Gilwiskaw Brook shall be constructed within 9 months of the date of this permission in accordance with either:

- a) the details approved under condition 71 of planning permission 2013/0986/07; or
- b) In accordance with the details set out in the Woodland Design Plan NFC03A dated January 2021

The construction and surfacing for those footpaths and bridleways which are to be dedicated as part of the restoration works to the east of the Gilwiskaw Brook shall be constructed in accordance with details outlined in Condition 17 of application Ref. 2019/2456/07

Reason: To ensure that public rights of way are provided in a timely manner for users in the locality, in the interests of local amenity.

13. Tree and shrub planting species mixes and planting densities along with seed mixtures and sowing specifications for the grassland areas to the west of Gilwiskaw Brook shall be undertaken in accordance with:

- a) the agreed Restoration and Aftercare Strategy dated October 2015; or
- b) in accordance with the National Forest Company's Woodland Creation and Management Plan revised February 2021.

Tree and shrub planting species mix and planting densities along with seed mixtures and sowing specifications for the grassland areas to the east of Gilwiskaw Brook shall be undertaken in accordance with details of Condition 18 of application Ref. 2019/2456/07.

Reason: To ensure that the restored areas of the site are brought back to a condition suitable for long-term beneficial use in the interests of biodiversity.

14. Following the restoration of the site the development shall be monitored in accordance with the post-restoration monitoring scheme for the re-establishment of shallow groundwater and the Gilwiskaw Brook, submitted and approved under condition 85 of planning permission 2013/0986/07.

Reason: To demonstrate that the stated aims of restoration have been met and that the link between groundwater and the Gilwiskaw Brook is reinstated.

15. The development hereby permitted shall take place in accordance with the Minorca Restoration Tributary De-culverting Works scheme, dated October 2015, subject to the development only taking place in accordance with the recommendations made by the Environment Agency in the letter dated 26th November 2015. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme.

Reason: To demonstrate that the stated aims of restoration have been met and that the link between groundwater and the Gilwiskaw Brook is reinstated.

Winter Water Storage Lake

16. The overflow for the lake and the on-line reserve shall be maintained thereafter at the agreed levels as set out in the letter dated 22nd May 2015 as approved under condition 71 of planning permission 2013/0986/07.

Reason: To ensure that the restored areas of the site are brought back to a condition suitable for long-term beneficial use in the interests of biodiversity.

Aftercare

17. Within one year from the commencement of development as notified under Condition 2b of permission 2019/2456/07 a detailed woodland management plan informed by assessments of the local hydrology of the land to the east of the Brook and an assessment of the areas of mature woodland shall be submitted for approval in writing by the County Planning Authority. The detailed scheme shall be based upon the details submitted within planning application 2019/2456/07.

Reason: To ensure that the restored areas of the site are brought back to a condition suitable for long-term beneficial use in the interests of biodiversity.

18. The land to the west of Gilwiskaw Brook shall be maintained in accordance with either:

- a) the Restoration and Aftercare Strategy dated 2015, the Minorca surface Mine Site Habitat Management Plan 2021-2031 dated March 2017 and The Former Minorca Colliery Coal and Fireclay Surface Mining Scheme 20 Year Enhancement Plan December 2011 and Drawing 193 D08a as previously agreed by the County Planning Authority; or
- b) in accordance with the above, as amended for land to the west of Gilwiskaw Brook by the Woodland Design Plan NFC03A dated January 2021 and the revised Woodland Creation and Management Plan dated February 2021. Aftercare shall continue for a period of five years from the date of completion of the restoration works.

The land to the east of the Gilwiskaw Brooks shall be maintained in accordance with plans and documents submitted as part of application Ref. 2019/2456/07.

Reason: To ensure that the restored areas of the site are brought back to a condition suitable for long-term beneficial use in the interests of biodiversity.

Public Rights of Way

A Public Right of Way must not be re-routed, encroached upon or obstructed in any way without authorisation. To do so may constitute an offence under the Highways Act 1980.

A separate application for a diversion of an existing Public Right of Way should be submitted under the Town and Country Planning Act 1990 to the Local Planning Authority. The applicant is not entitled to carry out any works directly affecting the legal line of Public Rights of Way until a Diversion Order has become operative.

Public Rights of Way must not be further enclosed in any way without undertaking discussions with the local Highway Authority (telephone 0116 305 0001).

If the developer requires a Right of Way to be temporarily diverted, for a period of up to six months, to enable construction works to take place, an application should be made to networkmanagement@leics.gov.uk at least 12 weeks before the temporary diversion is required.

Any damage caused to the surface of a Public Right of Way, which is directly attributable to the works associated with the development, will be the responsibility of the applicant to repair at their own expense to the satisfaction of the Local Highway Authority.

No new gates, stiles, fences or other structures affecting a Public Right of Way, of either a temporary or permanent nature, should be installed without the written consent of the Local Highway Authority. Unless a structure is authorised, it constitutes an unlawful obstruction of a Public Right of Way and Leicestershire County Council as Local Highway Authority may be obliged to require its immediate removal.

The considerations set out below apply to all the preceding applications.

EQUALITY AND HUMAN RIGHTS IMPLICATIONS

Unless otherwise stated in the report there are no discernible equality and human rights implications.

IMPLICATIONS FOR DISABLED PERSONS

On all educational proposals the Director of Children and Family Services and the Director of Corporate Resources will be informed as follows:

Note to Applicant Department

Your attention is drawn to the provisions of the Chronically Sick and Disabled Person's Act 1970 and the Design Note 18 "Access for the Disabled People to Educational Buildings" 1984 and to the Equality Act 2010. You are advised to contact the Equalities function of the County Council's Policy and Partnerships Team if you require further advice on this aspect of the proposal.

COMMUNITY SAFETY IMPLICATIONS

Section 17 of the Crime and Disorder Act 1998 places a very broad duty on all local authorities 'to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all reasonably can to prevent, crime and disorder in its area'. Unless otherwise stated in the report, there are no discernible implications for crime reduction or community safety.

BACKGROUND PAPERS

Unless otherwise stated in the report the background papers used in the preparation of this report are available on the relevant planning application files.

SECTION 38(6) OF PLANNING AND COMPULSORY PURCHASE ACT 2004

Members are reminded that Section 38(6) of the 2004 Act requires that:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Any relevant provisions of the development plan (i.e. any approved Local Plans) are identified in the individual reports.

The circumstances in which the Board is required to "have regard" to the development plan are given in the Town and Country Planning Act 1990:

- Section 70(2) : determination of applications;
- Section 77(4) : called-in applications (applying s. 70);
- Section 79(4) : planning appeals (applying s. 70);
- Section 81(3) : provisions relating to compensation directions by Secretary of State (this section is repealed by the Planning and Compensation Act 1991);
- Section 91(2) : power to vary period in statutory condition requiring development to be begun;
- Section 92(6) : power to vary applicable period for outline planning permission;
- Section 97(2) : revocation or modification of planning permission;
- Section 102(1) : discontinuance orders;
- Section 172(1) : enforcement notices;
- Section 177(2) : Secretary of State's power to grant planning permission on enforcement appeal;
- Section 226(2) : compulsory acquisition of land for planning purposes;
- Section 294(3) : special enforcement notices in relation to Crown land;
- Sched. 9 para (1) : minerals discontinuance orders.

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