

Ffos-y-fran - Failure to Restore

Statement and Evidence from Chris and Alyson Austin Residents - Merthyr Tydfil

Preamble:

Firstly, we do want you to get a feeling for the relationship we have experienced with the Local Planning Authority (LPA), and other public bodies in Merthyr Tydfil over the years. We do feel that we need to set the context, but I will try and keep to the salient points. We do need to include the run up to the restoration issues we are now experiencing. We are quite conscious of the time constraints and we won't be able to present orally all that we have here, but you can peruse this document at your leisure (!), after the event.

The fundamental message that we are trying to convey in our submission is that we are not wholly convinced that introducing further legislation will solve the problem. The public bodies, or agencies, that have responsibility in these cases are not using the powers that they already hold, so we wonder what would further legislation achieve? For us, it would be clarity of responsibilities and a means to hold the public bodies to account. There may be legislation and guidance that needs amending, but having a clear path to challenge a public body and ensure that they exercise their responsibilities. We have tried many ombudsmen over the years and have never had a successful outcome, even though we thought that our case was strong.

The MTCBC LPA, as the principle controlling authority of the Ffos-y-fran operation, along with the other associated public bodies, has presided over a blatant flaunting of planning law, and failed to act effectively, or even do anything at all at all, to remedy the almost 18 months of unlawful coal mining at Ffos-y-fran. The LPA are now repeating that act with their intransigence and inaction over the mining company's failure to provide the final restoration of the mine, and the subsequent flooding of the mining void with probably contaminated water.

From what we can determine, the legislation required to enforce and remedy this issue is already in place; but the mining company is ignoring it and the LPA, and other agencies, are refusing to action it.

Our story is 20 years long, and we can only provide a taste of the challenge we've faced trying to work with the MTCBC LPA. We will try to keep it to recent experiences as far as possible, but with reference to a few key historic events.

The relationship between ourselves and the Local Authority was sour prior to this latest fiasco, and we need to demonstrate this to you so that you can understand why their recent actions came as no surprise to us in any way. In reality, we expected it.

We have always been prepared to sit down and have a rational and professional discussion with anyone, at any level, on any issue that we have been involved in, and always start off with this approach, but our relationship with our LPA has always been acrimonious, and regrettably, has continued to be so. Campaign groups in place prior to us joining the fray said that this is typical of the way that they were, and still are, treated by the LPA here in Merthyr Tydfil.

We have always been treated by them as 'the opposition', or even 'the enemy', and we have been ignored, dismissed, marginalised, lied to, and misdirected in our time.

Meaningful public involvement on planning applications is not just discouraged by the MTCBC LPA, it's actively avoided, even planned out.

Our latest campaign against the extension of the Ffos-y-fran mining operation has (unusually) attracted a lot of media interest, and the behaviour of the MTCBC LPA has, to a degree, been exposed to a wider audience. Amazingly, this has not perturbed them in any way, and they carried on regardless even with public scrutiny of their actions. We cannot understand how they haven't been held to account for their actions and we even dare to think that it is because they are supported in these actions by the Welsh Government. But, again, who holds them to account for their actions? These actions have been performed in recent times and they cannot use the excuse '*all the officers involved in this case no longer work for the MTCBC LA*', (many of the officers from the start of this sorry affair are still in place though...) and as I said earlier, most of transgressions we are discussing occurred under their watch, and over the last 18 months.

My wife, Alyson, and I are both Merthyr born-and-bred, but we moved out in 1989 for ease of access to work in Cardiff. We returned to Merthyr in 2003 with our, then, young family, and fell straight into a resident's campaign against the proposal to build the massive Ffos-y-fran land reclamation scheme/opencast coalmine; a 17.5 year proposal. The impact on our densely populated community, immediately in the firing line of the mine (just 40 Metres at the nearest), was obvious. Noise, dust and light pollution for 16 Hours a day right up to the edge of our community.

We campaigned for a Health Impact Assessment (HIA) as the LPA refused to order the implementation of one saying it wasn't needed, so we commissioned our own via the Wales Health Impact Assessment Support Unit (WHIASU). Despite their findings being quite negative towards the proposed mine, and included WHIASU's call for the implementation of a 500 Metre buffer zone, the HIA was dismissed as having no weight by the LPA and the subsequently the WG because the HIA didn't include submissions from the MTCBC LA nor the mining company/applicant, even though it was them who refused to take part in the assessment when approached by WHIASU!

We then campaigned for, and took part in the consultation of the Minerals Technical Advice Note, MTAN2: Coal, along with its 500 Metre buffer zone. After quite some time in consultation, which then took it beyond the implementation of the Ffos-y-

fran proposal, it was passed, but the Welsh Government refused to apply it retrospectively. In addition, in its final form the technical advice note was fundamentally flawed as it still contained all the exclusion clauses ('exceptional circumstances') that we had argued strongly would make it ineffective.

The promises by the LPA of tight regulation and strong Section 106 agreements vaporised as soon as the mining operation started and the LA immediately gave the mining company 'self regulation'. A planning application to move the mined coal by road immediately followed (and was granted) despite '*all coal will be moved by rail*' being a key argument for the winning of planning consent. The only 'win' was that they constrained the company to 50,000 Tonnes per annum, but of course, we had no evidence of regulation by the LPA on this.

We had word (in September 2022) that a Section 73 (S73) planning application¹ had been submitted to extend the length of the coal mining operation at Ffos-y-fran. Again, we had to take a stand against this proposal as it was an operation that our community had already suffered, physically and mentally, for 15 years; far, far too long. The affected residents were looking forward to seeing the end of the mining operation, not a further 9 months, then possibly another 3 years, of coal mining. *[n.b. the applicant stated that they would be applying for 9 months, then a further 3 years, and then another amendment was submitted to vary the planning application to further extend the coal mining operation until March 2024; another 10 months of coal mining on top of their original application].* They argued that they needed this extension to make up for lost money that would be going towards paying for the final restoration of the mine.

In all instances we've found battle lines drawn from the start. At best, the LPA being extremely reluctant to talk to us, or work with us. At worst, we experienced the withholding of information, denial of access to the public register on several occasions, misinformation, and so on.

Transgressions, such as we have seen here with Ffos-y-fran, need to be dealt with strongly, quickly and visibly as they were evidentially unlawful and possibly even illegal. Our advice from planning and legal experts indicated that quick and effective enforcement action was possible within the planning system, but the LPA has baldly denied this throughout.

If our advice is accurate, and it came from the most reliable sources, then the LPA, for whatever reason, has failed to act in our interest and in accordance with planning law. If this transpires to not be the case, then we can only conclude that the planning system, as it is applied in Wales, is not fit for purpose.

In our most recent campaign; the extension of the coal mining operation at Ffos-y-fran, and now the mining company's failure to provide the final restoration of the

¹ MTCBC Planning Reference - **P/22/0237** (*Variation of conditions 3 (Coal Extraction) and 4 (Final Restoration) of planning permission APP/U6925/A/10/2129921*)

mine as contracted, the LPA has failed in its duty of care to the people of Merthyr, failed to apply the powers it holds, and is failing to protect the public purse.

[nb - It has to be borne in mind that, because the LPA are so insular and do not work openly with the local residents, this is how we perceive things to be. Our allegations here are, as far as we are concerned, factual in their statements, but how and why they came to be, and where they are going is largely a mystery to us. There may be a perfectly acceptable explanation for some of it (!), but the LPA have proffered none and we have no way of discerning them. We have to construct our understanding in some cases by reading between the lines and extrapolating from the information available].

Statement:

Unlawful Coal Mining by Merthyr (South Wales) Ltd. over 18 months beyond their planning consent, and outside of their licensed mine boundary:

This is not specifically within the remit of what we have been asked to present, but the restoration issue has rolled out of this last 18 months of unlawful coal mining; the reasons why they needed to continue mining; and the LPA's refusal to enforce planning conditions.

I've bullet pointed the issues for ease of reference, clarity, and brevity (!). Points can get lost in the middle of large chunks of text.

Unlawful Coal Mining:

- The MTCBC LPA refused to accept the evidence of continued coal mining presented to them by local residents
- The LPA failed to visit the mining operation to confirm the allegations of continued coal mining made by the local residents, despite frequent requests to substantiate the allegations. *(The coal mining operations are carried out in full view of a public road and is just 1.5 miles from the MTCBC Planning office)*
- The LPA failed to respond swiftly and effectively when presented with regularly supplied evidence from local residents. *(Good quality photographic evidence accompanied by detailed supporting information)*
- The LPA didn't inspect the spoil tip #3 (Overburden Mound 3, OB3) to confirm the allegations made by the local residents of ongoing works to construct a Motocross track, with supporting public infrastructure, on top of that tip
- The LPA didn't accept, nor confirm, that coal mining was still in progress until March of 2023; 6 months after the end of the mining company's planning consent, and 6 months of unlawful coal extraction at 1,000 to 1,500 Tonnes per day. *(This was only accepted when they were backed into a corner when presented with the Coal Authority(CA) figures for the mine's coal output for the end of 2022 by the Coal Action Network (CAN))*
- The LPA didn't accept (nor investigate, nor act) that coal mining was being carried out beyond the contracted boundary of the mine despite the work being readily visible from several vantage points and public roads

- The LPA refused to issue enforcement action and said that stopping the mining company from working whilst the LPA determined the planning application was '*... not something that they normally do*', and that if they refused planning consent in the future that they'd '*...look to implement legal/enforcement action retrospectively*'. We pointed out that this may work with an unauthorised house extension, but not with a coalmine. How can you recover the mined coal, relieve the local populace of its noise and dust impact, take the greenhouse gasses out of the atmosphere, and recover the money made by the mine ownerretrospectively? Utter nonsense!
- The MTCBC planning committee met to process the Section 73 (S73) planning application on April 26th 2023 where it was roundly, and unanimously rejected by the planning committee formed of duly elected MTCBC councillors. (*Ironically, even bizarrely, the LPA officer also recommended rejection of the planning application!*).
- The LPA promised the planning committee to act promptly to implement enforcement action/issue a stop notice to stop the unlawful mining activities, but subsequently failed to do so
- The LPA has now been seen to capitulate on all the mining company's requests within the Section 73 planning application and its subsequent amendment, (and more), despite the application being formally and unanimously rejected. In this instance, at least, the LPA could be perceived as subverting due process and consequently, bringing the planning system into disrepute
- The LPA have refused to issue enforcement action over the Motocross track, (*built as a permanent fixture to national and international standard along with public facilities and overnight camping for 2 day events*). The LPA said that the company was claiming it fell under Permitted Development (PD) despite it meeting few, (if any!), of Permitted Development conditions required under planning law
- The LPA have since accepted that the motocross track development doesn't meet PD conditions, but still refuse to issue enforcement action, despite much representation on the issue by local residents. The LPA are now in talks with the mining company negotiating retrospective planning consent for the Motocross track instead of implementing enforcement action for their planning transgressions
- To add insult to injury; the spoil tip, Overburden Mound #3 is/was planned to be the first spoil tip to be backfilled into the mining void as part of the final restoration of the mine
- It has been reported that the mining company have now sold the land under Overburden Mound #3 (*uncorroborated by us as yet, and to whom we are unsure*) and are abrogating responsibility for the Motocross track. This land is subject to current planning conditions, but yet again we have seen no action from the MTCBC LPA
- The LPA are now in talks with the mining company renegotiating a greatly reduced (inferior and cheaper!) final restoration scheme despite the mining company patently having the finances to fund the original scheme (*the mining company's finances have been tracked through Companies House by several organisations*)

- The outcome of the restoration renegotiation talks has been pre-empted, or maybe even predetermined by the LPA by its tacit acceptance of the Motocross track on top of Overburden Mound 3 (OB3), the first spoil heap scheduled to be returned to the mine during the final restoration phase within the existing, and currently only planning conditions/consent
- We asked the LPA for access to the Public Register during this period to view all documents that applied to the original restoration agreement with the mining company; and we still haven't been granted access. There is no longer a public front office to the planning department in Merthyr and access can only come by appointment from an LPA officer. Chasing permission and the appropriate officers is onerous, and obviously, in our experience, unproductive. The LPA's web portal is sparsely populated with planning documentation and we need to see the public register to get the full and original details. When asked to upload all documentation, the LPA said that there is no legal requirement to fully populate the web portal so it has but an incomplete, LPA chosen selection of the available documentation

The Coal Action Network (CAN) campaign group instructed legal counsel [*James Maurici, KC and barrister, Toby Fisher²*] to analyse the situation and provide legal opinion on the LPA's power to enforce the planning conditions. This confirmed that we, and other campaign groups were correct in what we had been asserting all along; that a *Stop Notice* could be deployed by the LPA at any time to halt coal mining whilst the planning applications and appeals were being determined. They went further and said that by not implementing this action the LPA could be considered to be acting unlawfully. Unfortunately, it is virtually impossible, financially, for the common man to challenge a public body in court.

In addition, Friends of the Earth (FoE) employ a planning expert who provided several guidance statements to the MTCBC LPA, the Welsh Government (WG), and the Coal Authority (CA). Again, supporting our claims by indicating that the LPA and WG have the power to implement a stop notice with little notice, and the CA had the power to enforce their license conditions, (the mining company were mining coal beyond their CA licensed boundary, and this has been confirmed by the CA with a statement and subsequent enforcement action).

The MTCBC LPA just replied to these assertions by saying that they take a '*...contrary legal position*' on the matter and have continued to avoid implementing a Stop Notice. Contrary to one of the most esteemed planning Barristers in the country? A rather arrogant and dismissive attitude.

² <https://www.coalaction.org.uk/wp-content/uploads/2023/06/Ffos-y-Fran-joint-opinion-MauriciFisher.pdf> - PDF of the Statement by James Maurici, KC and barrister, Toby Fisher

Failure by Merthyr (South Wales) Ltd. to Provide the Final Restoration of the Mine as contractually obligated:

We have feared for the future of the restoration of this mine for many years; most certainly since the announcement that the Ffos-y-fran operation was to be sold. The very thing that was used as leverage to get the planning consent, and from our/the residents point of view, the only benefit of the mining operation, is now to be denied us. This is a scenario that we anticipated, worked vigorously to avoid, (and it was avoidable), but now looks inevitable. It has to be remembered that Ffos-y-fran is Land Reclamation by Coal Extraction, not an opencast coalmine. I can assure you that we have been shouted down at meetings by LA and LPA members and even Councillors for calling it an opencast coalmine. This, despite the fact that it was demonstrably obvious to all that coal mining was its primary objective, and history has proven this to be correct.

Ffos-y-fran is a land reclamation scheme and the primary goal of this scheme is to reclaim and restore the (allegedly) 'severely derelict and dangerous' land on the Merthyr Common above Ffos-y-fran. The operator who accepted this task was to pay for this by the mining, and the subsequent sale of the extracted coal. Any coal sales profits that went over and above the funding of that primary objective was to go to the operator; but only then. The planning consent was granted on that basis. The making of a profit after their commitment/obligation to reclaim and restore the land was a risk that the operator had to accept; i.e. they had to accept the responsibility of the restoration and then the risk of not making enough profit. Unfortunately, but not unsurprisingly, this operation has been run with reversed objectives.

Our opinion of the LPA is not just confined to us. Other campaign groups, and the legal and planning experts that we've worked alongside have all said that they've not come across a Local Planning Authority the likes of Merthyr Tydfil's. They spoke of their stubborn reluctance to engage, their intransigence when asked to act or provide information, and their closed-shop, hostile and acerbic attitude amongst many other uncomplimentary descriptors.

1. The original mining company, owners of Ffos-y-fran scheme were Miller-Argent (South Wales) Ltd. (M-A) and this conglomerate was formed out of Miller group, a civil engineering firm from the midlands and who bought Wimpy Mining to get into the business, and Argent, the money side of the team who were funded by the British Telecom (BT) Pension Scheme money. Both were 'blue chip' companies and were 'good for the money' so to speak, and had a reputation to lose.
2. They had an agreement by Guarantee, to supply £15 Million to the MTCBC LPA if they failed to meet their obligations to restore the mine as per their contractual obligations
3. We argued that this was far too small an amount and that the final restoration and aftercare of the mine would be greater than this, and that the mining company could take this bargain payoff and walk away from their

obligations saving themselves many millions. But, our argument fell on deaf ears. At that point we hoped that the mining company had too good a reputation to renege on their obligations

4. We weren't so concerned about the restoration at this point, because the impact of the mining operation on the local residents was awful and took precedent. The restoration issue fell onto the back-burner for a while
5. Our concerns became major worries when the mining company (M-A) decided to sell the operation in late 2015
6. The Ffos-y-fran operation was sold to a local firm that didn't have the financial credentials of the existing mining company, (or the good name to lose!), and we contacted the LPA to advise them that they couldn't just transfer the existing 'guarantee' to the new operator and needed to demonstrate due diligence
7. Emails bounced back and forth between us and the CEO, Head of Legal and the Head of LPA in MTCBC with us arguing the case for a water tight 'guarantee' or 'bond' of a value more commensurate with the real world costs of the final restoration of the mine (*£50 Million estimated by the Welsh Government at that time*)
8. Our argument was dismissed, and the LPA applied the same £15 Million 'bond', but to be paid in instalments into an escrow account instead of providing a guarantee
9. The mining company offered no concerns about the cost of the final restoration of the mine at this point and ratified the existing contract and the 'bond' instalments
10. The mining company subsequently reneged on its obligations and withheld payment into the escrow account. The LPA had to take the mining company to court to get them to pay the remaining instalments when MSW decided to take a payment holiday. I believe they had to do this twice, but at least the once with much arguing to get the full amount paid
11. We observed that the mining company was 'short tipping' spoil from the mining operation but not bringing in spoil from offsite. This was the cheapest and easiest way for them to operate, but of course it heavily back-loaded the final restoration in work and costs
12. The only spoil brought into the mine was from the first, and nearest spoil tip but this was not just for restoration purposes, it was to afford the mining company access to the rich coal seams underneath the tip that they had no planning consent to mine
13. The mining company, Merthyr (South Wales) Ltd. (MSW), continued to mine coal unlawfully, and also outside of their licensed boundary for almost 18 months beyond the expiration of their planning consent so the start of the final restoration was delayed by that time. They could not restore the mining void whilst they were still working in that void
14. As soon as the mining company ceased coal extraction, they pulled out of the operation and switched off the drainage pumps These pumps were keeping the mining void dry and free from flooding whilst they mined the coal seams in there. This callous act ensures that the mining void will fill with water

15. The mine has not been surveyed to verify that it can safely contain a large body of water. There would be many millions of gallons of water in the void when full and it will exert a significant force on the surrounding walls and will force its way into any natural, or man-made, drainage channels and escape the mine
16. The mine cannot be surveyed fully and effectively when it is full of water! the mining void needs to be drained to afford a proper survey
17. MSW have told the LPA that they are looking to have the mine checked by civil engineers, hydrologists, and hydro-geologists, but there was no schedule or start time included in the statement and, as the mine is rapidly filling with water, the survey would be impossible to perform. Surveyors cannot realistically, nor effectively work underwater!
18. MSW have now patently reneged on their contractual obligation (as ratified in Dec. 2015) to provide the full and final restoration of the mine.
19. MSW said that it would be submitting a revised, but much reduced, final restoration plan/strategy. This was expected by all to be presented as a planning proposal in early 2024, but they are now saying late Autumn of this year at the earliest. This would ensure that, without intervention, the mining void would be flooded by that time, and the LPA has confirmed this
20. The LPA has stated that it is content to wait until the late Autumn (2024) and review the mining company's revised restoration planning proposal at that time
21. The LPA has said that by that time the mine would most likely be full of water and restoration could not be performed as previously envisaged and contracted
22. The LPA is failing to act on this transgression, despite the mining company reneging on its contractual obligation to fully restore the mine. They have the power to hold the mining company to account, but are choosing not to do so
23. The LPA has stated that any new and reduced restoration plan will, in all likelihood, include a flooded mining void
24. I have written to the MTCBC LPA asking them to look to use the escrow account money (the £15 Million should now be available to them) to reinstate the pumps as a matter of urgency and reminded them that they have a duty of care for the health and safety of the local populace.
25. The remaining mining void is at a height of 100 to 200 Metres above the town centre and the river Taff. A significant fall to the town centre via some of the most densely populated areas of Merthyr between it and the river Taff
26. If the mine's walls were to fail catastrophically millions of gallons of water would flood through the populace into Merthyr town, or through historic waterways into Dowlais or Penydarren. Lives could be at risk and property could be damaged or destroyed
27. In actuality, the consequences of flooding the mine with water are unknown, and what the consequence of such a catastrophic failure would be, nor how likely it is to happen, as the mining void hasn't been independently surveyed by experts
28. The flooded mine would pose a significant danger to children as all 'dangerous' structures will be a magnet for the young. The site cannot

successfully be secured and they will have ready access the mine. The steep, loose sides will pose a hazard to those who climb down and enter the water, by accident or design. They will not be able to climb out easily, nor exit the mine readily

29. The water in the mine will contain natural toxins leaching out from the surrounding strata and possibly from any contaminants left in the mining void by the retreating mining company when they abandoned it [*i.e. stopped work; pulled out all the machines; switched of the drainage pumps; and left the void fill with water*]. These toxins could escape the mine by leaking out, or 'overtopping' the lowest wall (nearest the dual-carriageway) and would then enter the local watercourse, the river Taff, and into the water table. They will also pose a hazard to anyone who enters that water
30. Sulphuric Acid from the oxidation of Iron Pyrites is one of the nastier contaminants/pollutants and this is hazardous to life and could erode the foundations of buildings if it leaked into the water table around the built up areas. Toxic metals, like Nickel, can also leach out into the water and the contaminants could escape the mine into the local watercourses and the water table. High-Sulphur coal seams will also add to the toxic load
31. Even with this evident risk, and the danger that it could present, none of the public bodies or agencies (LPA, CA, NRW, HSE) that could make this mine or reservoir safe is acting with any urgency. They are all content to sit back and watch it fill with water. They have to be proactive here; not just reactive to the mining company's actions, (or inactions!)
32. Frustratingly, there is absolutely no need for this situation to occur. The mining company has made a vast amount of money out of mining the coal at Ffos-y-fran. 7 years of legal mining with a further 18 months of unlawful mining has made an obscene amount of money for MSW. £200 Million at least has been reported by external agencies (*such as the Good Law Foundation, just by scrutinising the Companies House accounts records*) to have been drawn-down from the operation over the years. More will be revealed by further accounts that are yet to be submitted
33. Coal sales prices have been at 'windfall' prices over the last 3 years and profits have increased by at least 5 fold. The company was making very good money at the standard prices, so anything over and above that would have been straight profit
34. The estimates being used for the cost of the final restoration of the mine by MSW, the LPA, and Welsh Government (WG), and other agencies is, in our opinion, vastly overinflated. The £125 Million figure currently being circulated wasn't arrived at by industry or civil engineering estimates of the remaining works, it came out of a desk exercise performed by one of the officers in the MTCBC LPA. Not exactly a dependable figure to base all future decisions upon. This figure begs a survey of the mine by industry specialists and civil engineers
35. This figure of £125 Million is being used to argue that MSW cannot possibly afford the final restoration costs and therefore is driving the renegotiation of the final restoration plan/strategy, despite it being an unverified, unsubstantiated and inherently untrustworthy figure

36. The estimated figure prior to this was £50+ Million, produced for the WG, and even this figure has been described by some as overinflated. This was produced by the Welsh Government in 2014, and was updated in 2018 to £50-£60 Million
37. This massive increase in the cost of restoration is being cited by the mining company as the increase in the cost of fuel, and their loss of access to discounted 'red' diesel since April 2022 and along with rising vehicle maintenance costs. But, that increase could only be explained by just multiplying up their fuel costs whilst running a full coal mining operation; restoration fuel usage and overheads would be significantly less because of the much reduced vehicle usage. This is a complex calculation that needs to be driven back from the actual restoration method to be employed, not just estimated from existing operational figures
38. The estimate depends on large digger and truck usage, similar to the existing usage which they appear to have just scaled up, but the more likely, best practice industry solution would use conveyor belts, chutes, and feed hoppers being loaded by a relatively small number of diggers and bulldozers. There would be significantly less fuel used, and much reduced vehicle maintenance costs
39. With this solution, there would be no further coal lorries running up and out of the mining void, and back and forth across the long haul road to the railhead/Coal Disposal point (CDP) at Cwmbargoed. There would be no lorries bringing spoil to the void from the CDP coal washery, and none taking spoil to the spoil tips. The giant Komatsu Super Shovel diggers would be overkill for the restoration works and their massive fuel use could be avoided. There would be a saving on the cost of the expensive daily coal train as no coal will be exported from the site, along with the cost of running the coal washery, and the CDP itself. Staff costs would also be reduced as with much reduced machinery use the number of operators needed would reduce significantly.
40. There would be far fewer machines and operators needed, and the fuel costs that they claim have massively inflated the restoration cost would be kept low as there would be no longer any need for lorries driving back and forth between the railhead, mining void and spoil tips heavily laden with coal and spoil.
41. In reality, we believe strongly that the full and final restoration of Ffos-y-ffran could be completed at a fraction of the estimated costs currently being used and this has been confirmed by speaking to engineers
42. We have asked the MTCBC LPA to look again at using the escrow account money (£15 Million) to reinstate the pumps as a matter of urgency and reminded them that they have a duty-of-care for the health and safety of the local populace. This money was lodged in that account for this very purpose; to make the mine safe and secure in the event of the mining company reneging on their contractual obligation to fully restore the mine. They have not replied, despite prompting
43. National Resources Wales (NRW) have the power to classify a structure as a reservoir, and we have asked them to do so for the mining void. This classification would trigger a formal, mandatory inspection of the mining void

by civil engineers, hydrologists, and hydro-geologists to verify that it can safely hold a large body of water

44. Unfortunately, NRW have declined to classify the mining void as a reservoir. With them taking the literal description of a reservoir within the Reservoirs Act 1975 it is unlikely that the flooded void would attract such a description. We feel that this is against the fundamental ethos/core principles of the Act, but we cannot change this in the time allotted to us
45. We have contacted NRW informing them of the milky blue/green colour of the water in the void and asked them to investigate the water quality for pollutants. I took the opportunity to explain what could happen if the polluted water were to escape the confines of the mining void.
46. NRW have replied stating that they haven't, and won't be testing the water in the void. They said that the responsibility for the water lay with the mine/land owner. We asked them about verification and enforcement, and yet again, as with the Coal Authority, that power cannot be surrendered. It becomes a fox in the henhouse scenario!
47. The LPA have stated recently (to a 'Wales Online' reporter) that the water levels are decreasing [*uncorroborated by us, as we cannot see into the mine without a drone*]. If this is true, then this raises further concerns as to where that water, and any polluted content, is escaping to. The weather here has been extremely wet, so the void should be continuing to fill with water at a pace
48. We believe that the Coal Authority (CA) has the power in these cases, (mine-water handling), to enforce agreements or step in and sanction a safety inspection and appropriate remediation action if the owner does not act themselves
49. The CA have not acted, as yet, and they are denying that they are responsible for the water filled void. They said that the responsibility lies with the LPA or the mine/land owner
50. We have written to NRW and the CA urging them to act on our behalf, the affected local residents, as a matter of urgency and ensure the future safety of the local populace, but to no avail so far
51. Our MP, Mr Gerald Jones, has added his name to our request for action from the CA and forwarded our concerns to the CA and asked for all communication between us to be copied to him
52. We have written to the CA, again, and asked them to revisit their decision and provided them with detailed argument as to why they are responsible for this situation and suggesting what they need to do now as a matter of urgency i.e switch the pumps back on and drain the mining void. They replied reiterating their initial assertion - nothing to do with them
53. MSW has now clearly demonstrated that they have no inclination to meet their contractual obligations as defined in the original (2007) planning consent for the Ffos-y-fran Land Reclamation Scheme. With the mining company, MSW, now clearly reneging on its legal obligation to fully restore the mine as it ratified in their agreement with the MTCBC LPA of 2015, the money lodged in the escrow account (£15 Million) can now be released into the hands of the MTCBC LPA.

54. This money would go a long way to make the mine safe, and it can even be argued that using the suggested industry standard 'muck shifting' solution that there was a good chance that the bulk of the work could be completed for this sum. Certainly the most important task of backfilling of the mining void and re-profiling of the surrounding land and spoil tips
55. The mine has now become a blot on the landscape, a scar on the hillside clearly visible above the Eastern heights of Merthyr Tydfil for the foreseeable future, or even in perpetuity. The remediation of Ffos-y-fran for safety, and to make it visually acceptable was the main driver for this scheme, and now we will be left with a more dangerous and visually tarnished result. 17 years of opencast coal mining to deliver a worse landscape than we started with!
56. In our opinion, with the mining company clearly demonstrating its intransigence towards providing the final restoration works, and certainly with no commitment to solving the rapidly ongoing flooding of the mining void (they have stated that they have no intention of switching the pumps back on), the LPA should cut them loose and take on the final restoration themselves using the £15 Million. The coming reduced restoration plan would, in all probability, be unacceptable to us and just a mere sop compared to what needs to be done, and if the LPA agrees to a reduced scheme, the £15 Million surety would revert to the mining company. The LPA would be left with nothing and would have to accept whatever work the mining company provides. With the LPA's track record for not holding the mining company to account, we expect very little expenditure and a very poor restoration - minimal work for maximum money!
57. Some of this escrow £15 Million could be used, in the first instance, to put drainage pumps back into the mining void and clear the water
58. If the MTCBC LPA decided that the mine was to be flooded in the future, (certainly not our first choice!) the money could be further used for an inspection and survey by independent civil engineers, hydrologists and hydro-geologists to give the local populace a guarantee of the mining void's future safety to hold a large body of water, and to implement any remediation needed to ensure this
59. If the MTCBC LPA accept the responsibility for the restoration of the mine with the £15 Million 'bond' in their control, (even if it is just the infilling of the mining void to make it safe, and re-profiling the tips and the hillside), the work could start once the mining void is cleared of water
60. The MTCBC LPA have never shown any conviction to hold the mining company to account against their planning conditions. Under intense pressure from residents and environmental organisations they failed to put effective enforcement in place to stop the unlawful mining of coal at Ffos-y-fran for almost 18 months beyond the expiration of their planning consent. We feel that we are witnessing yet a further extension of their intransigence
61. To add insult to injury, the spoil tip near the railhead, Overburden Mound 3 (OB3), was planned (under the existing planning consent) to be the first spoil tip back into the mining void. This tip now has an operational Motocross track on top of it which is being operated without planning consent. The mine owner is claiming 'permitted development (PD)' to use the track, but it meets

none of the criteria that PD requires. This Motocross track has been built as a permanent fixture to national motocross standards and with spectator parking and overnight sleeping facilities. They held many fixtures there last season, most of them held over a 2 day weekend with loud entertainment and music blaring out late into Saturday night

62. The LPA has declined to challenge the company on its use of the motocross track without planning consent and is now currently negotiating with the mining company to grant them 'retrospective planning consent'. This cannot be allowed
63. We believe that the planning consent for this Motocross track will form part of the new planning application by the mining company, or will at least run in parallel with it. This planning application will be presented as a take-it-or-leave-it offer that the planning committee (our elected representatives - councillors) will feel that they are unable to refuse. A shotgun planning meeting, per se. it will be bundled in with a last chance offer to restore the mine in a very much reduced form, along with the flooded mining void
64. This scheme is primarily Land Reclamation, and was termed Land Reclamation by Coal Extraction. The coal was to be mined, and then its subsequent sale was to pay for the land reclamation works. Any profits over and above this expenditure was to go to the mining company as profit. The mining company has operated it as a coal mine and is now keeping the majority of those profits. They are now claiming that they cannot afford to complete the remaining land restoration because of rising costs, but they have not submitted any financial evidence to support this statement, and the LPA has refused to investigate their financial status/claims. All other found evidence points to this being an exaggeration at best
65. We, the local residents, did not want this mine - it was forced upon us. The only benefit to the scheme was the reclamation of the alleged 'dangerous' and 'derelict' land. We have suffered the impact of 17 years of opencast coal mining on our doorstep, and we now face not getting the only benefit (to us) of the scheme.

Key Points for any Further Legislation or Action on Restoration:

The main point that we need to make here is that we are not convinced that new legislation will attend to the restoration issues unless all the agencies involved could be made to apply the powers that they hold. We strongly believe that, generally, the powers that are required to hold errant mining companies to account are already in place. Not having the will to use these powers is where the system has failed. A review of the legislation would have to be performed to confirm this, of course.

We have made forceful representation from the beginning, 20 years ago, to try and ensure that we got the final restoration of the site as we were promised, and we failed on all counts. The planning proposal, and then the planning consent for Ffos-y-fran was on rails, and nothing we said or did could affect it. 20 years on we now find ourselves in the exact position that we warned about from the start, and more frustratingly, since the sale of the operation to the current owner/operator, Merthyr (South Wales) Ltd., when restructuring of their legal obligations could have been readily implemented.

Points to be considered:

- Clarification of the responsibilities of each of the public agencies in these cases needs to be provided so that we will know who does what, who has responsibility for what, who can apply enforcement action, when and how? This would at least include the Coal Authority, National Resources Wales, the Local Planning Authority, the Welsh Government, and the Health and Safety Executive public bodies. Other agencies with involvement in these cases also need to be identified and have their responsibilities clarified. We have found this one of the most difficult things to overcome; getting anyone to accept responsibility for anything when the legislation and Acts appear to clearly state that they are responsible has been extremely frustrating and mostly fruitless. Nebulous and ambiguous statements in the Acts, along with exclusion clauses/exceptional circumstances ensure that legislation/Acts/Statements can be interpreted to the LPA's end. These need to be eliminated and/or firmed-up and clarified
- The public bodies involved have all responded to our pleas for intervention with the same reply; the responsibility for action doesn't lie with them, it lies with the mine owner and land owner. This abrogation of responsibility and granting the operator 'self regulation' as such cuts to the heart of my previous statement. The LPA promised us tight regulation and that the company would be constrained by the most comprehensive Section 106 conditions that they'd issued, but as soon as planning consent was granted, they gave the mining company self-regulation, even to the degree that we had to report all noise and dust issues to the company, not the council. The mining company didn't set up any formal telephone reporting service, and all calls went through to the security guard who had no formal training in handling public complaints, and had no formalised call logging and recording system in place. NRW and the CA have just

replied with the same response. CA - we don't own the land, and the mining company is no longer mining coal, so the onus is on them to rectify issues; not us. NRW - the water in the void, and the responsibility for any pollution/contaminant checks lies with the mine owner, land owner, and we leave it to them to check it. We haven't had any pollution issues logged, *[by the operator - ChrisA]*, so all is OK.

- The scope of the Acts/legislation needs to be defined clearly. In particular the new Coal Tips Act must include responsibility for the water filled voids that so many opencast coalmines have left their communities with. It may also need to include the water filled levels that can break free and flood communities with large volumes of contaminated water, (such as Skewen, Swansea³ *"The Coal Authority is still not accepting liability, they say it's not their water," Mr Thomas said. "But it was their mine shaft!"*), or the responsibility for these needs to be clearly identified. The Coal Authority's responsibilities have been almost impossible to define, but as a Westminster reporting agency they are 'untouchable'. We honestly do not know what the Coal Authority does beyond their issuing of a license to mine, despite what the Act⁴ defines. They have denied responsibility for anything, throughout. They even charged us £48 to see a copy of the map defining the boundary of the mine! Surely such information should be on the public register?
- Who polices the police? As we discussed here; we feel that most of the powers needed to act are already with these agencies, but in our experience they fail to apply them, (or even acknowledge them!), and hold the mining company to account when they transgress. But, who holds these agencies to account? Our attempts at petitioning the ombudsman in the past have just resulted in them supporting the LPA's actions, or have pointed me back to the council's internal system, which also supported the LPA's actions
- Sums of money to be lodged in escrow accounts to be of a 'realistic' value that will cover the restoration cost of the mines when/if the mining company fails to deliver on its contractual obligations. Again, the question of who ensures that this sum is realistic? We tried our very best to highlight this issue and were ignored. We have been shouted down in meetings containing LPA and councillors when we've called for representative 'bonds', with them saying *'these people don't know what they are talking about; we wouldn't get anybody to mine if we asked for such large sums of money'*
- These planning proposals must be driven with more bias towards the impact on the local populace. Our experience is that they have been wholly dependent on ensuring that the work is allowed to carry on and the applicant supported by any means to ensure that this happens. The residents concerns are secondary, at best; dismissed, at worst

³ <https://www.bbc.co.uk/news/uk-wales-60069085> - BBC News 21 January 2022 - Skewen Flood

⁴ <https://www.legislation.gov.uk/ukpga/1994/21/section/4> - Coal Industry Act 1994

- The funding of work prior to 1998, and arguably after this date, should fall to the Coal Authority as it was Westminster that decided on coal mines prior to devolution. Post devolution, and certainly in the case of Ffos-y-fran, we have had sight of letters, under Fol requests, from a DTI minister (*Mike O'Brian - Minister of State for Trade and Minister of State for Energy and e-Commerce - - 14th December 2004*) urging the then Welsh First Minister, Rhodri Morgan to act swiftly on the planning consent for this opencast coal mine as the coal is needed for Aberthaw power station. A fall back position from this would lead to the Welsh government paying for the works as they were the authority who finally gave permissions for the Ffos-y-fran operation to go ahead after the proposal was called-in with a public inquiry and the minister passing the decision. This is all from the public purse though; it should be from the mining company who really are cash rich. No-one is investigating the financial status of the mining company, which we think is critical to the restoration argument; the LPA have refused to do so.
- Mine owners and companies that have reneged on their contractual obligations must not be given lucrative government contracts in the future. Written into legislation this may go some way to deter companies from transgressing. It is looking very likely that the mining company working Ffos-y-fran, and who are reneging on their contractual obligations to restore the site, will be given the contract for the reduced restoration of the site. This would then result in the LPA giving back to the mining company the £15 Million 'bond' money to do the work as it would be tied to the new agreement, not the existing one, so they wouldn't be reneging on their contract. As an example, we believe that there is a huge contract for the Global Centre for Rail Excellence (GCRE) at Onllwyn, at the head of the Dulais and Tawe valleys may go, in part, to the Walters Group⁵, who were involved in 2 transgressions at Parc Slip and East Pit leaving the sites un-restored with water filled mining voids⁶ and resulted in (failed) legal action from the Serious Fraud Office
- The LPA was warned of the most probable outcome for the restoration at Ffos-y-fran (by ourselves, campaign organisations, and even the Welsh Government). but failed completely to put anything in place to stop it, manage it, or build in contingency for managing that outcome. The mining company walking away from their responsibilities to restore was inevitable, but the LPA failed to put in place a new legal agreement for a larger 'bond' to be lodged, and allowed the mining company to continue mining in a manner that heavily back-loaded the restoration works. Under the circumstances, a water filled void was also inevitable, but again, mitigation was not put in place and we now have the development of a dangerous structure that will blight the Merthyr town in perpetuity. This has happened under legislation and guidance that could readily

⁵ <https://nation.cymru/news/full-steam-ahead-as-new-250m-global-rail-centre-project-buys-former-opencast-mine-site/> Nation Cymru Report

⁶ <https://www.sfo.gov.uk/2013/01/24/five-charged-south-wales-mining-sites-fraud-case/> Serious Fraud Office Report

manage these issues; what further controls could be put in place to manage this unprofessional conduct?

- The LPA has brought the planning system in Wales into disrepute by presiding over the mismanagement of the situation at Ffos-y-fran. Whether this was by incompetence or design we cannot say, but the mining company were allowed to mine coal well beyond the end of their planning consent by a series of actions made by the LPA that contrived to hold the wolves at bay on the mining company's behalf. It ranged from allowing them time to work without issuing enforcement action, then not issuing a stop notice, then issuing enforcement action incorrectly so it became null-and-void, to allowing them to work until the end of their contract with TATA, then working further because the weather was bad (!), and then a rolling weekly planning review and consent to allow them further time well into the New Year (2024). They then allowed for further coal extraction by allowing the processing of coal from the overburden mounds and calling them 'coal stockpiles' despite the spoil having to be processed to achieve a 15% return of coal. All these decisions were made independently by the LPA, without the benefit of scrutiny by our elected representatives sitting on the planning committee, or public consultation. Such patent manipulation of the planning system appears to be performed with impunity. Who holds LPA's to account under circumstances such as this?
- The future of coal in Wales is not dead, unfortunately, despite statements made in the Coal Policy 2021. The new, under-the-table Welsh coal policy is being revealed by proposals to process the so called dangerous historic coal tips. The 'Bedwas Tips' proposal to remediate the coal tips looming over Bedwas, lower Rhymney Valley has highlighted issues that are very concerning. Private finance is looking to remediate the (Category D) coal tips there with the recovered coal paying for the work, (hmmm....sounds familiar?!). It sounds, superficially to be 'a good thing' but, this proposal could become opencast coal mining dressed as a safety issue! The company will be allowed to mine virgin coal from the un-worked seams at the top of the mountain via the 'Incidental Coal' agreement. If *(and I'm sure that it will be arranged to be quite certainly so...! All coal seam details are very well recorded)* the company uncovers a coal seam with their workings, or constructions they can mine that coal legally with authorisation from the Coal Authority⁷. The operation then becomes an opencast coalmine despite never having been through the planning process as such. A much easier ride for the applicant! The timescales will also be extended, and this is being built in to the planning applications, to accommodate the extra work. This really needs to be investigated and controlled as this will probably be a test case for the other 80+ Category D tips across Wales (350+ tips in all categories) and will set a precedent that will allow for the maladministration of the planning system going forward

⁷ <https://www.gov.uk/government/publications/incidental-coal-agreement/guidance-notes-for-applicants-for-incidental-coal-agreements> - Guidance notes for applicants for incidental coal agreements; Coal Authority

**Key Statements by the Public Bodies Involved -
Regarding the Final Restoration of the Site and the
Water Filled Mining Void:****National Resources Wales (NRW):**

- **Filling of the void (with water):** ...as described previously, the void does not fall under the Reservoirs Act 1975, so at this time it does not fall under our remit.
- **Water sampling & quality:** at this time, we are not undertaking water samples from within the void. The operator, MSW (Ltd), do have permits in place, **including regarding discharge of water (effluents)**. Previous to the pumps being switched off, the water would've have been pumped and discharged via the agreed discharge points from the site. The monitoring requirements for the operation are outlined in the permits, which require the operator to monitor for suspended solids, pH, iron and visible oil and grease from their discharge points.

As such, we've had no concerns regarding permitted discharges over the last year and we've not had any water quality/pollution events logged over the past 12 months *[ChrisA EDIT - it wouldn't hurt for you to check that the rather untrustworthy mining company is actually giving you correct information?]*

Ideally *[?! ChrisA - so NRW have no power to enforce the wider monitoring of water?]*, we would like to see MSW(Ltd) take up our suggestion around wider water quality monitoring in and around their operation, which would be outside the requirements of a NRW permit

- **Is it a Reservoir?:** The void has been purposefully excavated below natural ground level and we are not aware of any dam which retains water in the Ffos-y-Fran void, other than the exposed, but natural, rock faces.
- **On the matter of the void**, we provide the following advice which in summary is that in its current state, even though it may fill with water, the void does not form a large raised reservoir within the meaning given by the 1975 Act. There are some very limited, pre-planned circumstances which could result in a large raised reservoir being formed, but simple filling of the void is not one of them.
- **The void at Ffos-y-Fran** is an “*area created by artificial means*” but is not designed or used for collecting and storing water. In fact, the opposite is true – it's desirable that water is pumped away from the void to prevent storage and a cessation of pumping should not infer a “use”. For clarity, we do not consider other dictionary definitions of reservoir because it is defined within the law for a specific purpose.

Whilst the void itself is created by artificial means, any water in the void is retained by the internal faces made of natural ground.

We do not dismiss your concerns, but it would be improper and beyond our powers to regulate the void under the Reservoirs Act 1975

The Coal Authority (CA):

- Ffos-y-Fran surface mine has a current coal mining licence but the site has ceased coaling so we have very limited powers or involvement with the site other than ensuring that the remaining lease and licence conditions are met. *[ChrisA - EDIT - this is a 'Catch 22' scenario - the mining void would be pumped dry to facilitate mining coal in there and would only be allowed to contain water when the mining company finished coal extraction!]*
- With regards to the sections, you have quoted from the Coal Industry Act 1994 these responsibilities pass to the operator when a lease and licence is in place. **Water management and site safety is therefore the responsibility of the operator with oversight from the environmental regulator and the local authority.**
- Following the **closure** of a surface mine the **restoration and associated public safety is a matter for the landowner and local authority.**
- In your latest email, you refer to sections of the Coal Industry Act 1994 to demonstrate our responsibilities including section 4A (2) which states that these sections only apply to coal mines vested in **(owned by) the Coal Authority**. In our previous response we explained that **we transferred ownership of this mine from the Coal Authority via the lease we granted to the Operator in 1998**. This ownership does not revert to us when the Operator ceases to extract coal at the site. *[ChrisA - Edit - they have abnegated responsibility for the coal mine, but I was asking about enforcement, which we thought clearly sat with the CA]*
- Our enforcement powers would only apply to a circumstance where an Operator was breaching the terms of their licence.
- For surface mines, local authorities are the primary authority for their regulation, through planning permission and enforcement through the planning regime.

The Merthyr Tydfil County Borough Council (MTCBC) Local Planning authority (LPA):

- The Council are very much alive to the concern you have raised regarding the rising water levels within the mining void, which is no longer being pumped out by Merthyr South Wales Ltd (MSW). This issue has been under constant review by the Council and MSW are actively monitoring the water levels. **At present the Council is satisfied that the water body is well contained within the mining void and it does not currently present a significant concern.** The water levels would have to rise considerably higher before there would be any concern with the water over topping the land around the void
- There have been discussions between the Council and Natural Resources Wales (NRW) to determine whether the water body would fall within the remit of the Reservoirs Act 1975. **NRW has advised the Council that Ffos Y Fran does not meet the test for being a large raised reservoir**
- **MSW are currently in the process of appointing hydro-geologists, hydrologists and water quality consultants to assist in the assessment of the water body within the void and the wider restoration of the mine.** This will form part of the on-going discussions between MSW and the Council, as well as other regulatory bodies
- **There are currently no plans for MSW to reintroduce pumps on site to remove the water from the mining void. This would likely have a significant impact on the viability of any restoration scheme and would likely present concerns with regard to the rate at which water could be discharged from the void into nearby water courses without causing flood risks downstream**
- **MSW has informed the Council that a planning application for a revised restoration scheme is scheduled to be submitted in late Autumn 2024. The revised restoration scheme is likely to include the retention of the water body within the mining void with the surrounding land being appropriately re-profiled**
- In regards to the restoration proposals, the Council has been in discussions with **MSW who have appointed consultants to prepare a revised restoration scheme.** There are also ongoing discussions with MSW to establish what interim restorations could take place ahead of any revised scheme
- ...it would be usual [*unusual?* - Chris Austin] **for the planning department to seek to investigate the financial position of any developer.** Whilst some information can no doubt be obtained, this may not always be accurate or complete

- In the event that a revised restoration strategy is submitted **it would be for the applicant to set out their case as to the reasons why an alternative scheme is being presented.**
- I have noted your comments on the initial anticipated costs for the restoration work, which were previously estimated to be in the region of £50m - £60m. **I am not aware as to whether Miller Argent (former mine operator) or Merthyr (South Wales) Ltd (MSW) have set aside funds for the restoration works based on these previous estimates, nor has the Council had sight of any financial records to demonstrate otherwise.** Nonetheless, the restoration of the site remains the responsibility MSW to ensure they comply with the relevant planning conditions. **To date MSW has not indicated that they have any other funds in addition to the £15M secured in the Escrow accounts**
- The present situation is that a restoration strategy was granted as part of the planning permission **and further details are required**, which sets out the final details and aftercare
- However, this **approach may involve changes to the approved scheme, particularly if it deviates from what has been granted permission.** In this regard **MSW have indicated that they intend to submit a revised restoration scheme and the Council remains open-minded to a possible alternative scheme.** This would likely involve a review of **how the existing overburden mounds are restored and any other cost effective methods that can be utilised to improve the viability of the restoration works**

The Merthyr Tydfil County Borough Council (MTCBC) Local Authority (LA):

- Gareth Chapman, CEO - The document to which you refer issued in February 2016 is "Best Practice" and not legislation, however, much of what is suggested in the good practice was considered by the Council when negotiating the bond back in 2004/2005. The Agreement covering the bonding arrangements was entered into on the 30th March 2005
- Gareth Chapman, CEO - As I advised on the 23rd February, the restoration of the site has begun, regular monitoring, progression and compliance with conditions in accordance with the relevant legislation is ongoing.
- Gareth Chapman, CEO - There are no concerns with the site operation or restoration at this time, but we will of course keep this under constant review and take action if and when necessary and appropriate.
- Gareth Chapman, CEO - Much of what you raise is clearly your own opinion and analysis of the acquisition of the respective shareholding and "what could happen" (which I respect) upon which we will have to beg to differ.
- Huw Lewis, AM - Mr. [Gareth] Chapman confirms that the £15 million surety in respect of the Ffos Y Fran site remains in place. **The council has also secured that by January 2022, a cash deposit of £15 million will also be available for restoration costs.** *[Chris Austin - EDIT - there has been no talk of the further £15 Million since then - we are chasing it, but don't expect them to answer or be open about it]*
- Jo Smith - Planning Directorate - Merthyr Tydfil CBC would be in a better position to know about the future intentions of the company as they deal with them on a regular basis and **we do not generally interfere in matters that are related to day to day planning control**
- Jo Smith - Planning Directorate - **In terms of restoration, the local planning authority would be responsible for controlling and enforcing the terms and conditions of any Section 106 agreement.** I do not have any information on the section 106 agreement so these questions would be best asked of the Council
- Jo Smith - Planning Directorate - ... I can confirm that as a matter of principle **planning permission is registered with the land (the site) and so any existing constraints, such as operating hours, would still apply should a transfer of land to another company take place**