

Firas Y Fran Complaints 01/04/2007-31/03/2009

| Complaint No | Complaint Number | Officer | Details |
|-------------------------------------|------------------|---------|--|
| Abandoned Vehicles | | | |
| 07/04/2009 | WK/200710705 | RAI | Burnt out car |
| 14/01/2009 | WK/200900299 | RAI | MGB F T O removed from opposite Miller Argent site |
| 14/01/2009 | WK/200900300 | RAI | Ransalt Clio picked up from opposite Miller Argent. |
| Air Quality | | | |
| 27/03/2009 | WK/200902207 | ZP | I hope you can clarify my understanding of an exchange we had at the recent Ffroy-Fran Liaison Meeting. I was asking about the availability of air pollution monitoring records and understood your reply indicated that such records are available or |
| Commercial Dust/Particulates | | | |
| 08/11/2007 | WK/200710381 | DD | Dust nuisance |
| 08/11/2007 | WK/200710382 | DD | Dust from Miller Argent |
| 17/04/2008 | WK/200803246 | ZP | Dust coming from Ffroyfran |
| 17/04/2008 | WK/200803253 | ZP | Dust problems coming from Ffroyfran |
| 17/04/2008 | WK/200803255 | ZP | Dust coming from Ffroyfran |
| 06/05/2008 | WK/200803271 | ZP | Dust coming from Ffroyfran - he doesn't want to mention name as he has a member of family working there |
| 06/05/2008 | WK/200803683 | LMP | Dust coming from Ffroyfran |
| 07/05/2008 | WK/200803882 | ZP | I guessed as much, but needed to get the facts as people are complaining to us about dust fallout from the mine. There has been noticeable fallout, but didn't want it to get mixed up with Sundays if it wasn't true. |
| 07/05/2008 | WK/200803715 | LMP | Dust coming from Ffroyfran |
| 08/05/2008 | WK/200803716 | LMP | Dust coming from Ffroyfran |
| 08/05/2008 | WK/200803744 | LMP | Dust coming from Ffroyfran |
| 08/05/2008 | WK/200803748 | LMP | Dust/dirt in the Bradley Gardens area - query Ffroyfran? |
| 08/05/2008 | WK/200803749 | DD | Complaining about the puff of smoke coming from the opencast site. Did not wish to ring Miller Argent but said he would like Environmental Health to do something about it! |
| 14/05/2008 | WK/200803881 | ZP | she has a sample of the dust coming from Ffroyfran could you please call her to arrange to visualise the dust |
| 15/05/2008 | WK/200803926 | ZP | I live in Denistons Close, Dowlais. The weekend 19th and 20th April was a particularly bad weekend for black dust deposit. I too have a sample but I don't think it appropriate to bring a floor cloth to |
| 15/05/2008 | WK/200803958 | LMP | Dust every where |
| 24/07/2008 | WK/200805994 | DD | Lot of black dust from site (gathering on her window ledges) |
| 26/09/2008 | WK/200807787 | RAI | Black dust from site gathering on windowills etc. |
| 29/09/2008 | WK/200807797 | ZP | Dust and noise from site all last week - noise up until 10pm at night |
| 06/11/2008 | WK/200808834 | ZP | Car and window sills covered in dust |
| 16/03/2009 | WK/200902135 | ZP | Dust from Ffroyfran |
| Dust, Ash, Grt, Sluets | | | |
| 02/01/2008 | WK/200800140 | DD | Dust and pollution from Miller Argent |
| 23/03/2009 | WK/200902089 | ZP | We've had quite a lot of dust fallout on our estate this week. It was first noticed on Thursday 19/03/2009, (from Wednesday), and then again on Sunday 22/03/2009, (from Saturday). |
| Light Nuisance | | | |
| 26/11/2007 | WK/200711022 | ZP | Working on Saturday 24 November later than midnight (into Sunday) - bright lights etc |
| 14/12/2007 | WK/200711521 | ZP | Bright lights from site |
| Noise-Commercial | | | |
| 30/01/2009 | WK/200900726 | LMP | Noise from heavy vehicles in evening 28/01/09 reported to security officer on site. Again telephoned regarding vehicle noise on evening of 29/01/09 no response to tel number given |
| Noise-Cast/Dem.Site | | | |
| 13/11/2007 | WK/200710778 | DD | Noise coming from Ffroyfran |
| 20/11/2007 | WK/200710890 | DD | Noise from machinery at Ffroy Fran Site |
| 20/11/2007 | WK/200710913 | DD | 2 weeks noise level from machinery at Ffroyfran - is it possible to have a noise level machine to monitor level |
| 23/11/2007 | WK/200710993 | ZP | Last night shot of noise at 10.40 pm it stopped just before 11.00 pm - could you please call him after 1.00 pm this afternoon regarding the problem |
| 24/07/2008 | WK/200805975 | DD | Has noticed that the noise levels are a lot worse lately From 7 in the morning till 10 at night she says it is so bad she cant open doors or windows and is impossible to sit in her garden. Asked for noise level machine? |
| Noise-Heavy Indust | | | |
| 11/12/2007 | WK/200711426 | ZP | Noise from opencast 7.00am-11.00pm |

18/12/2007 WK/200711576
 19/12/2007 WK/200711591
 12/02/2008 WK/200801135
 13/02/2008 WK/200801194
 14/02/2008 WK/200801205
 17/02/2008 WK/200801283
 07/03/2008 WK/200801917
 18/03/2008 WK/200803236
 17/04/2008 WK/200803223
 17/04/2008 WK/200803227
 17/04/2008 WK/200803233
 17/04/2008 WK/200803240
 17/04/2008 WK/200803244
 18/04/2008 WK/200803258
 18/04/2008 WK/200803270
 21/04/2008 WK/200803283
 21/04/2008 WK/200803286
 22/04/2008 WK/200803277
 23/04/2008 WK/200803291
 06/05/2008 WK/200803310
 07/05/2008 WK/200803691
 07/05/2008 WK/200804255
 08/05/2008 WK/200803729
 08/05/2008 WK/200803743
 09/05/2008 WK/200803782
 12/05/2008 WK/200803828
 13/05/2008 WK/200803846
 13/05/2008 WK/200803873
 14/05/2008 WK/200803924
 15/05/2008 WK/200803928
 15/05/2008 WK/200803957
 16/05/2008 WK/200803971
 20/05/2008 WK/200804071
 21/05/2008 WK/200804150
 29/05/2008 WK/200804311
 13/06/2008 WK/200804856
 01/07/2008 WK/200803371
 24/07/2008 WK/200803981
 11/08/2008 WK/200806487
 30/08/2008 WK/200807036
 18/09/2008 WK/200807481
 23/09/2008 WK/200807564
 23/09/2008 WK/200807692
 23/09/2008 WK/200807701
 23/09/2008 WK/200807721
 24/09/2008 WK/200807759
 29/10/2008 WK/200808630
 30/10/2008 WK/200808667
 31/10/2008 WK/200808672
 03/11/2008 WK/200808673
 04/11/2008 WK/200808737
 28/11/2008 WK/200808770
 06/01/2009 WK/200900543
 30/01/2009 WK/200900554
 30/01/2009 WK/200900728
 20/03/2009 WK/200902041

LPries are worse again. PASSED ONTO MILLER ARGENT
 Noise from Fios-Y-Fran GIVEN HER MILLER ARGENT NO
 Noise from open cant late at night (usually 10.30 pm to 10.45 pm) Can you please ring and advise. Thank you.
 Loud noise from site until 11 pm
 Noise from site between 7am-1pm - she goes to bed at 9pm and cannot sleep - want to know why we cannot take any action - can you please phone her
 Also of noise coming from Fios-Y-Fran especially Thursday night at 11.00 pm
 COULD YOU PLEASE CALL BACK
 Noise from Fios-2-Fran on Thursday, Saturday and Monday
 Complaining about the noise from the site after 10.30pm last night. She has tried ringing Miller Argent but the a recorded message keeps telling her number temporarily unavailable.
 Alert of dust in the air from Fiosyfran and also the noise after 9.00pm. I have given her Miller Argent's number
 Noise coming from Fiosyfran last night, exceeding 42 decibels, he is saying it is breaching the planning guidelines, he didn't want to pass to Miller Argent as this is a public health problem
 Drooning Noise from trucks from 7am in the morning until 11 pm
 Dust and noise from Fiosyfran
 Very loud noise from site at 10.10 pm. Also quantity of dust
 During the night a loud noise from the site. Sound similar to an engine of an aeroplane
 Loud noise coming from Fiosyfran
 Please log unable to sleep due to noise from Fios y Fran Frid 10.29pm
 Noise over the weekend very bad, also he thinks they are breaching the planning with regards to, too near dwellings. HE WAS HOLDING ON MILLER ARGENTS NUMBER FOR 20 MINUTES AND NO ANSWER
 Noise has been very bad for the last couple of nights - her children cannot get to sleep
 Noise from Fios-Y-Fran started 8.00 am
 Noise from Fiosyfran opencast
 Complaining about the noise disturbance
 Excessive noise from Fiosyfran opencast. wants a phone call ASAP and also for someone to attend his property at night to hear noise
 Noisy from machinery - mainly at night noise levels PLEASE CALL BACK WITH SOME FEEDBACK THANKS
 Saw remstar - Constant drone of dump trucks until 22.33
 Noise from lorries - sounding like helicopter noise - unable to get any rest or sleep
 Noise is horrendous. Can you please contact with some advice
 complained about the noise late at night and the amount of fine dust it is causing(fios y Fran)
 Noise nuisance
 Noise Problem was the worst it's been last night
 Noise from site
 The noise is going on until 11.00pm at night
 Complaining about the noise level after 7pm and going on until 11pm every night. Would like to be made aware of the limits of the noise levels permitted.
 The opencast noise in Pandydarn at present is frankly ridiculous. I therefore would like to make a complaint. I would like to know if readings have been taken along royal crescent? and if so what the dB(A) ratings are and if they based over the u
 Noise from the Fios y Fran site - ongoing
 Gentlemen wishes to complain about the noise created and the dust. Complaining the dust is affecting health and causing unnecessary mess and generally believes the council should be doing something. He has already spoken to Miller Argent.
 Complaints about the noise that is coming from the site.
 Noise coming from is described as terrible and goes on until late at night. Has complained before and was told about silencing equipment but nothing seems to have been done.
 Noise nuisance - very bad today
 Noise nuisance in the morning. Rang lifeline at 8.39am and 11.05
 Noise from Miller Argent - would like to be telephoned after 12.30pm
 Work started at 7 am. Site Agent have been contacted message left. also spoke to Agent on site. Unable to get hold of Site Manager
 Letter received requesting information concerning noise problems at above site.
 Lots of noise from site
 Lots of noise today - tried ringing 0870 no but put to an answering machine
 I have picked up phone message from a person who wishes to complain regarding the noise emanating from the Miller Argent site at night - he claims it is way in excess of the agreed levels. Could you's member of your team ple
 Complaining about the noise coming from the machinery. Particularly loud at night and goes on until very late.
 Lots of noise from site
 Noise coming from site
 Continuous noise since last week
 Loud noise at 9.30 am on 4 November 2008
 Very noisy today from the excavators - she has reported this to Miller Argent
 Horrendous noise 8.10 pm 5/1/08. Site foreman contacted complainant telephoned 8.30 pm complainant telephoned site at 9.45 due to noise still continuing. (Noise level taken) wants to know what action we as an Authority are taking
 Noise at around 7.30pm on 29/1/09
 Noise from Fios-2-Fran - rang lifeline at 19.45pm (19/03/2009) - also complaining no one at Miller Argent in authority to take call - only a security guard

Site Report
 07/09/2007 WK/200708721
 Smoke-Other Sources
 09/02/2009 WK/200909080
 Grand Total: 95

ZP

Proposed Brickworks

ZP

Dirt smoke emitted from Komatsu for the past three weeks. Video taken

Commercial Dust/Particles

Details

01/04/2009 ZP WK/200902584 Phoned to say was near Ffosyfran site and there was a machine blowing out a tremendous amount of dust.

01/06/2009 LMP WK/200904088 Thick black dust blowing into house Please ring

02/06/2009 ZP WK/200904595 dust problem

Dust,Ash,Grit,Smuts

02/06/2009 ZP WK/200904116 Excessive quantity of dust from site

02/06/2009 ZP WK/200904117 Excessive dust from site. vehicle covered

25/06/2009 AW WK/200904797 Inside the property covered in dust particularly Wednesday 24 June 2009. Whilst ironing Thursday 25 June dust covering ironing board. Garden furniture also covered in dust having only been clean previous week

25/06/2009 ZP WK/200904810 Dust problem every time there is an easterly wind - already phoned Miller Argent

Noise-Commercial

14/04/2009 ZP WK/200902655 Reported at 8.22 9/04/09 noise from machinery

15/04/2009 LMP WK/200902723 Noise started at 6.40 am - reported it to Miller Argent who said that they have Kylie on site taking measurements

20/04/2009 LMP WK/200902828 Started work on open cast 6.45 telephone number but was constantly busy

02/06/2009 ZP WK/200904096 Millar Argent called 20.00 spoke to security guard who advised foreman in charge would call back. Requested call logged waited 30 minutes no call.

09/06/2009 LMP WK/200904297 complained the previous week of noise from site he is still awaiting a response from the Council

09/06/2009 LMP WK/200904512 Noise and dust levels high

29/06/2009 LMP WK/200905105 complaining about the noise

Noise-Heavy Indust

02/04/2009 ZP WK/200902456 Complaining about the noise from the site. Described as an 'aeroplane droning noise' from 7am until 11pm.

15/04/2009 ZP WK/200902738 Noise is very bad today - she can hear the bucket going into the ground

15/04/2009 ZP WK/200902740 Very, very noisy today

24/04/2009 ZP WK/200902964 Noise problem this morning - she rang Miller Argent - the foreman didn't get back to her. She is in today after 12.30

27/04/2009 LMP WK/200902985 Complaint of noise. had even attended the site with no satisfaction

09/06/2009 ZP WK/200904301 Noise

Grand Total:

20

Compalint Type Complaint Number Officer Remarks

Commercial Dust/Particles

01/04/2009 WK/200902584 ZP

Had already left work so unable to deal and only picked up complaint day later . Have informed admin to check in future which Officers are still in work and refer complaint directly to them so they may visit site as nuisance is occuring. zp

2/4 -During meeting with Kylie she informed me that she visited Bradly gardens that night (and I believe site was shut down due to noise levels evident in vernon close ?) zp

01/06/2009 WK/200904088 LMP

01/06/09 Visited the property. No visible airborne dust but clear deposition on the window sills and when wiped the kitchen worktop with his hand a similar, dark grey dust could be seen - this was reported to have built up since 10:30 this morning when the worktop was wiped off (reported that she had seen the dust blowing in when lit by sunlight that morning.) Wind blowing intermittently but strongly from the site, hot and dry - vehicles could be heard operating on the site but could not be seen. reported that he had attempted to speak with Kylie but she had not been available. Advised him of the general controls in force and that we would be investigating further. LMP

02/06/09 Passed the details to for consideration with the other issues being discussed with Kylie. LMP

02/06/2009 WK/200904595 ZP

2/6- spoke to in person internal window cills covered in black dust informed her that I had just come back from a meeting with Kylie jones and that water bowsers were operating on site and no sign of dust emanating off site today, but dust scan had shown increase dust coverage over past weeks due to dry weather. That you would expect dust in air from an operation like this. Agreed that I would inform Kylie of complaint and ask her to ring direct. zp NFA

Commercial Dust/Particles 3

Dust,Ash,Grit,Smuts

02/06/2009 WK/200904116 ZP

2/6- 12.20-12.30 T/C to Kylie Jones on both land line and mobile no reply. T/c to front desk answerphone message left for them to ring me back. DAVE Dier and MC have gone out on site to witness dust nuisance. 12.35 - t/c to have informed him of my actions. i.e officer on site, tried to contact Miller Argent I have a meeting with Kylie at 2pm will discuss with her then. zp
Dustscan shows increase in dust from 28April - MAY 18 day period dust from site and road. zp
sit sit at 4pm no sign of dust over Vernon close

email recieved from Kylie 25/6/09 zp

Yes I have discussed with them and I will be visiting them at there properties to discuss this afternoon. We have the full fleet of dust suppression units out, nonetheless we shut down 3 excavators from 19:30 pm last night and everything stood on & off from 07:10 am - 09:15 am this morning, one excavator will not work today as the material she is to did potentially will cause dust.

Fog Cannon due to arrive tomorrow.

No exceedences on the 24hr average for the TEOM.

Hope this helps, let me know if you need anymore info at this stage.

Kind regards

Kylie

>>> " , " < @merthyr.gov.uk> 25/06/2009 12:50 pm >>>

Hi Kylie - just received two complaints from regarding dust. They have informed me that they have both already contacted the company.

Regards

Compalint Type Complaint Number Officer Remarks

15/04/09 Visited nos. 32 and 28 (no access at 32). Observed the excavator operating in direct line of site just below the horizon. Noise clearly audible outside the properties but not a nuisance at the time of the visit. It could barely be heard inside no. 28 in the GFF room with the windows closed and the TV on but when the TV was muted the noise was apparent as a low frequency drone rising and falling approx 2-3dB(A) above background. Indicative that a problem might exist in the summer during the evening or early morning when background noise levels would be lower and the windows would be expected to be open. Weather was extremely windy (from the east) with intermittent light rain/low cloud and unsuitable for taking noise level measurements. LMP

15/04/09 Advised of the findings and of the fact that further readings are planned for the evening as it is more likely that a nuisance will exist when the background noise level is lower. LMP

16/04/09 Discussed the matter with . Kylie has not yet responded to her call but the matter of the continued extraction during the period of easterly winds is to be raised as it conflicts with the company's undertaking not to do so. LMP

20/04/2009 WK/200902828 LMP

20/04/09 Visited Llwyn-yr-Eos at 18:15 and stayed until 19:00hrs. No visible activity on the site and no noise at all - very quiet in the area. Weather clear and calm with very high, light cloud. LMP

21/04/09 Telephoned and advised - he confirmed it had been quiet last night and stated it had also be very quiet the night before. Complaint referred to Sat 18th. LMP

02/06/2009 WK/200904096 ZP

2/6- Complainant only wanted complaint logged discussed with kylie. zp

09/06/2009 WK/200904297 LMP

09/06/09 Telephoned - involved with a customer at the time - requested a ring back. He telephoned last week and yesterday - very annoyed at the lack of initial response although he admitted that Peter Diamond had visited last night and dealt with the noise that was causing problems at the time. LMP

09/06/2009 WK/200904512 LMP

09/06/09 He is living by the Bogey Road () - MA foreman visited last week and stopped most of the noise. Also dust particularly bad at the time. Advised him on the taking of noise measurements and, in response to his inquiry regarding access to the monitoring data from the fixed sites under FOI, referred him to Planning. Informed of the receipt of the complaint. LMP

29/06/2009 WK/200905105 LMP

Complaint Type **Complaint Number** **Officer** **Remarks**

29/06/09 Telephoned n response to a message received. He stated that the noise was very bad at that moment (12:40pm) and had been since that morning. He stated that he had contacted his solicitor who had advised him to notify us of any incidents. Advised him that was currently at lunch but I would discuss the matter on her return with a view to visiting to assess the level of noise - advised that his wife would be in all day should we wish to do so.

Discussed the matter with and agreed a visit to assess the noise.

Arrived on site at 15:30. Wind gusting force 3 variable direction, sunny and hot (27.5°C) with high light cloud. Excavator noise clearly audible but not a statutory nuisance although it was more audible outside no. 32 than elsewhere in the Close. advised that the noise level had dropped at around 14:00hrs. Agreed that she would contact us when the problem next occurred. LMP

30/06/09 Advised of the findings and discussed arrangements for notifying Kylie in future. LMP

Noise-Commercial 7

Noise-Heavy Indust

02/04/2009 WK/200902456 ZP

2/4 -complaint discussed with Kylie Jones EA had forwarded complaint to her before passing on to us. She had contacted complainant. NFA

15/04/2009 WK/200902738 ZP

16/4- t/c to she could hear bucket head of machinery when sitting in dinning room with windows shut lunch time. Also very loud in garden . raining easternly wind. 6pm in night watched TV upstairs in bedroom no noise heard see complaint 200902740 for further info. Explained had visited area (with LMP) at 10.30am and contacted Miller Argent. Requested she ring me if noise level loud again I would try and visit her at home to assess level. zp

15/04/2009 WK/200902740 ZP

15/4 -site visit to Bradley gardens, incline cottages, mount view, Twyn - very wind /raining. Could clearly hear excavator in bradley gardens clear line of site. Went inside number with TV on / window shut could not hear could not hear noise when talking. When TV off and listened for noise could hear low level drown. Considered not a Stat Nuisance due to time of day,(10.30am) weather conditions and level of noise inside did not affect enjoyment of property. Lady did say was louder in bedroom but did not wake her up and didn't affect her when busy in day.

Mount View - could hear but hard to distinguish between traffic noise and excavator also very windy Not a SN

Incline side -could hear excavator but gale force wind so not a SN .

16/4 - T/C to message left on answerphone

16/4- email to Kylie zp

24/04/2009 WK/200902964 ZP

Compalint Type Complaint Number Officer Remarks

24/4- complaint recieved 10am site visit undertaken to her property 10.20am. She was at work therefore only able to witness noise level from street easternly wind could hear excavtor but did not consider it to be intrusive due to time of day and other extraneous back ground noise i.e neighbour working on car in garage (sounded like cutting metal) dust wagon, traffic on A4060. When in car with windows shut no noise audible. t/c to informs me she could hear noise in her house upstairs just after 7am. Miller Argent informed at 10am they visited site straight away see email below.

Hi Zoe 24/4 11.42am

If this is we received complaint at 7:30, we had a representative of Miller Argent at Bradley Gardens at 7:45 am who confirmed that he could hear site intermittently but in his opinion did not find it intrusive and other noise such as traffic from A4060, dustbin collection and cars leaving for work was the dominant noise source. and I have just arrived back to site, we have visited Bradley, Twyn, Vernon Close and Dowlais, at Bardley and Vernon you can currently here site as background noise but not intrusive. The complaint received this morning was taken by security, passed to the general foreman and Rob Jones as soon as it was received, we have no time limit in which we call residents back, we want to investigate thoroughly first, I have left a message with her on her house phone but she is currently not at the property.

Hope this helps

Kylie

21/04/2009 WK/200902985 LMP

27/04/09 Was quiet last week until Friday when it was was very loud - went up to the site (very irate) and spoke with security guard. He received a message 21:15 'from one of the women there' who rang him and said they were stopping at that time (and did). Advised him on the matter. LMP

09/06/2009 WK/200904301 ZP

9/6- spoke to she informed me noise was loud Monday night and this morning (tues morning). She was now in work so I was unable to visit proeprty and get access in side to assess noise level. Advised her that I start work at 8am so if loud again in morning to ring me I would try and visit her home straight away. Informed Kylie of complaint see email below with her response

email from Kylie 9/6

Hi ,

We received her complaint on site yesterday afternoon & again this morning, along with 'ast night.

At 17:00 - 18:00 pm and I were off site and moved two excavators to lower levels, I rang ba. and informed her, at that time she said she was cooking dinner and couldn't hear the noise, we certainly could not hear the site from within the vehicle.

At 8:30 pm last night everything bar two excavators was shut off due to easterly winds. The Foreman was down at Bradley Gardens and spoke to outside her property at 8:20 pm when she was arriving home, she was not in her property when the foreman first arrived.

We continue to do checks today, this morning at 8:30 am I was able to hear site as background noise, but do not think this would cause disturbance during the day unless you were listening specifically for the site at Bradley Gardens.

We will conduct the same checks today at approx 17:00 - 18:00 pm, and similarly the foreman will go off site at 19:00 hrs, a decision will then be made this evening on shutting machinery down depending on their observations.

I hope this helps with your investigations.

Noise-Heavy Indust

Grand

20

6

Ffos y Fran – Public Health update
Liaison meeting 23/01/09

Apologies - Zoe Pieris Principal Environmental Health Officer
Attending - Dave Dier Head Public Health

Complaints received (between 27/11/08 -22/01/09)

| | No's | Location | Date received | Time | No. of complainants |
|------------------|------|-------------------|-----------------------------|--------|---------------------|
| Dust complaints | 0 | | 9th Feb | | |
| Noise complaints | 3 | 3 Bradley Gardens | 30 th January 09 | 7.30pm | 2 |
| Total complaints | 3 | | | | 2 |

Complainants contacted on each occasion and complaint discussed. Kylie Jones informed of complaints.

Complaints (by letter) – None

Site visit in response to complaint to assess Statutory Nuisance

Date: 5th Jan

Time: 17.30 – 18.00

Weather: Very cold, force one wind from the site

Location: Bradley Gardens - noise clearly audible outside properties and clear line of site to excavator. Noise inaudible inside property. Officers professional opinion Statutory Nuisance could not be conclusively established. If these noise levels had been observed during the summer months may be indicative of a Statutory Nuisance. Noise measurements taken at two locations in Bradley gardens results 53dB LAeq 10min and 54.3dB LAeq 10min, which are both below the permitted planning condition of 55dBA Leq 1hr.

Interim meeting with Kylie Jones – 15th December 2008 and 22nd January 2009

Meeting with K Jones to discuss progress of noise mitigation measures, dust scan results and complaints received.

Zoe Pieris

NOISE ASSESSMENT

Introduction

As a result of several complaints being received from residents of Bradley Gardens, and surrounding neighbourhoods regarding excessive noise emanating from Ffos-y-fran Land Reclamation Scheme noise measurements were taken to determine:

If a noise nuisance existed to local residents

Technical Information

Noise Source: Vehicle movements Ffos Y Fran

Date: 10 June 2008

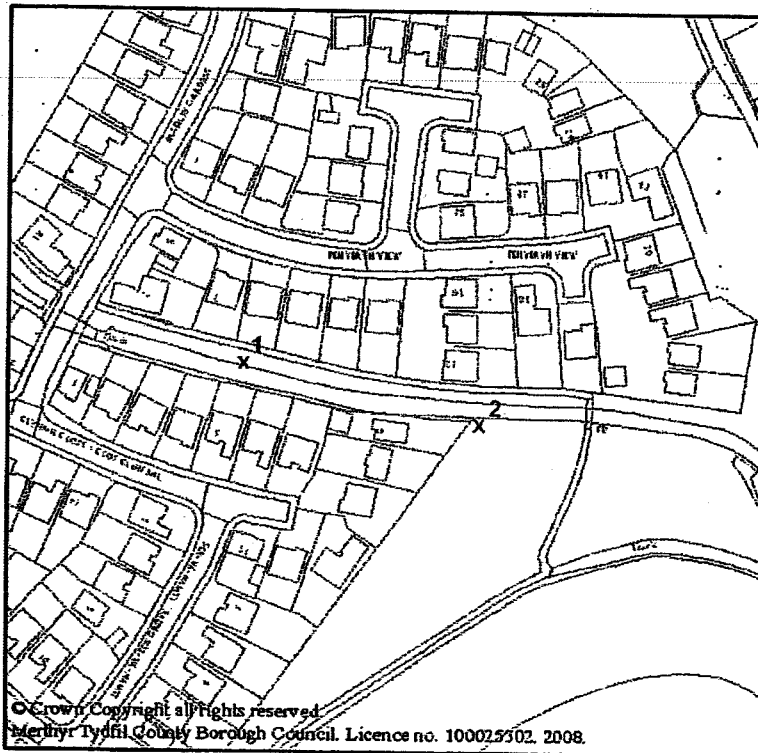
Weather Conditions : Warm, dry, still

Measured: Free Field

Total Measurement Time: 22.16 hours – 23.06 hours

Monitoring Location

Two positions rear of Glynmill Close as shown in location map below.



Location chosen:

1. Number of complaints
2. Proximity to site 600m

3. unobstructed line of sight
4. Dominant noise source not perceptibly influenced by extraneous noise.

Results

The noise source was monitored by taking a total of three series of 15 one-minute measurements at position 1 and position 2. Subsequent analysis showed this was not substantially influenced by any other noise sources i.e. road traffic.

| Location | Position 1 : rear 5 Glynmill Close |
|--------------------------------|---------------------------------------|
| Time 22.16– 22.31 | Total time 15 min |
| Min dBL _{Aeq,1min} F | 40 |
| Max dBL _{Aeq,1min} F | 43 |
| Ave dBL _{Aeq,15min} F | 42 |

| Location | Position2: rear 8Glynmill Close |
|-------------------------------|------------------------------------|
| Time 22.35 – 22.51 | Total time 15 min |
| Min dBL _{Aeq1min} F | 38 |
| Max dBL _{Aeq,1min} F | 43 |
| Ave dBL _{Aeq15min} F | 40 |

Note: Noise source stopped 22.50

One incident of extraneous noise 22.49 plane passing overhead excluded from the measurement.

Background measurements

15 one min background measurements were taken 22.51 – 23.06 results given below:-

| Location | Position 2: Glynmill Close |
|------------|----------------------------|
| Min LAF 90 | 29 dB |
| Max LAF 90 | 34 dB |
| Ave LAF 90 | 31 dB |

The assessment was undertaken in accordance with BS 4142: 1997 "Method of Rating Industrial Noise Affecting Mixed Residential and Industrial areas". BS 4142: states the greater the difference between existing background noise levels and the noise source the greater the likelihood of complaints.

- A difference of around +10 dB or more indicates that complaints are likely.
- A difference of around +5 dB is of marginal significance.
- If the rating level is more than 10 dB below the measured background noise level then this is a positive indication that complaints are unlikely.

If the measured noise source levels are compared directly to the measured existing background noise levels, measurements show that the noise source is significantly higher than the background as shown in graph 1.

The noise assessment undertaken in accordance with this standard indicates that the noise source is 13dB(A) above background. Hence complaints are likely and measures should be put in place to mitigate the noise source and its effects on local residents.

Public Health Department
7th July 2008

Chris Austin

From: Bob Griffin [abergrif@lineone.net]
Sent: 18 August 2009 13:34
To: Chris Austin
Subject: FW: Ffos y Fran Complaints Procedures

Chris, Alyson,

For your information

Bob

If you are not the intended recipient of this message, please advise Bob Griffin on bobgriffin@merthyrldems.co.uk or by phone on 01685 38 38 35 and delete the message from your email device. If you are not the intended recipient, acting on any information contained in this message may be illegal and action will be taken to enforce confidentiality of communications to and from Cllr Bob Griffin.

-----Original Message-----

From: Davies, Norman [mailto:Norman.Davies@merthyr.gov.uk]
Sent: 18 August 2009 10:35
To: Bob Griffin
Cc: Chapman, Gareth; Morgan, Geraint; Dier, Dave
Subject: RE: Ffos y Fran Complaints Procedures

Bob,

First, an unreserved apology: I had drafted my response on 1st July following a meeting with Gareth, Geraint and Dave. For whatever reason, probably old age, I failed to send it to you.

Turning to the main concern set out in your emails of 3rd and 16th June, relating to complaint recording procedures at Ffos y Fran, unsurprisingly the main body of complaints relate to noise and dust. The last recorded telephone complaint to my Enforcement Officer was logged at 1425hrs on 30th June 2008. The majority of complaints are therefore made to the Public Health Division.

As you are aware, the existing complaints procedure, agreed at the Liaison Committee, is that any calls taken out of office hours (1700—0830) are directed via the Business Support Unit. The Unit records the call, which is recorded for the Public Health Division. The caller is also given the Miller Argent tel. no. A reciprocal arrangement exists whereby Miller Argent alert Public Health of complaints. During the officer meeting, there was a consensus view that the existing arrangements are satisfactory and there is no need for change. For the avoidance of doubt, those present at the meeting had sight of hard copies of your emails.

Norman

From: Bob Griffin [mailto:abergrif@lineone.net]
Sent: 17 August 2009 10:57
To: Davies, Norman
Subject: RE: Complaints procedure

Norman,

Is there any progress on this matter?

Bob Griffin
Councillor, Town Ward

If you are not the intended recipient of this message, please advise Bob Griffin on bobgriffin@merthyrldems.co.uk or by phone on 01685 38 38 35 and delete the message from your email device. If you are not the intended recipient, acting on any information contained in this message may be illegal and action will be taken to enforce confidentiality of communications to and from Cllr Bob Griffin.

-----Original Message-----

From: Davies, Norman [mailto:Norman.Davies@merthyr.gov.uk]

Sent: 16 June 2009 13:56

To: Bob Griffin

Subject: RE: Complaints procedure

Bob,

Understood!

Thanks.

Will pursue.

Norman

From: Bob Griffin [mailto:abergrif@lineone.net]

Sent: 16 June 2009 12:14

To: Davies, Norman

Subject: FW: Complaints procedure

Norman,

I have added my original message to the bottom of this reply to create a thread for your records.

My main point relates to the proper recording by Merthyr Tydfil CBC of occasions when residents wish to comment or complain about noise, dust or other alleged nuisance arising from the Ffos-y-fran operations (or from some other source, for that matter). At this time, I am less concerned about what actions Council Officers may follow after having received these complaints.

My experience, and the experience of many residents I have spoken to, is that telephoning 01685 725000 and asking to report excessive noise or dust from Ffos-y-fran results in the switchboard operator giving out the Miller Argent telephone number and indicating to the caller that Miller Argent should be telephoned to record the complaint. There does not appear to be a procedure for Merthyr Tydfil CBC to record either the number or the nature of the complaints from residents who initially call 01685 725000 unless resident persist and ask for a specific person or department. I suspect that most residents will not be aware of the distinction between a possible breach of Planning conditions and a possible statutory nuisance and I doubt that many callers will have sufficient knowledge of Council operations to do anything other than follow the advice given by the switchboard operator.

I don't have the resources to answer my phone all the time during office hours, but I do try to record the number and nature of calls that I receive, and so does my colleague Cllr Amy Kitcher. There is a significant difference between the number of calls we receive about Ffos-y-fran; the number of complaints recorded by Miller Argent, and the number reported by Merthyr Tydfil CBC at the Liaison meetings.

I believe a large number of residents with a complaint are reluctant to contact Miller Argent directly for a variety of reasons, and I know the number of complaints reported by Miller Argent at Liaison meetings is typically fewer than the number I have received.

I also note that if I were to start building an extension to my house that gave rise to complaints from my neighbours about noise and dust, and queries about the permissions I had for the extension, you wouldn't instruct your switchboard to tell complainants they should ring me to complain, and ignore this response from my neighbours.

So, my request is for some procedure to be devised so that those wishing to complain about Ffos-y-fran can be confident that their complaint is registered with your department in your role to monitor and enforce the planning conditions for the mining operations at Ffos-y-fran.

Thanks,

Bob Griffin

Councillor, Town Ward

Merthyr Tydfil County Borough Council
Ty Kier Hardie
Riverside Court
Merthyr Tydfil CF47 8XF

Attn: Lisa Donnelly

Your ref. LMD/FOI-405

Our ref. PS/Ffos-y-fran

12 March 2009

Dear Sirs

**Environmental problems from Ffos-y-fran opencast coal mine
Request for information under the Environmental Information Regulations 2004**

We are instructed by local residents concerned about noise, dust and other air pollution arising from the opencast operations at Ffos-y-fran.

Residents have sought information about the pollution problems from Merthyr Tydfil County Borough Council including the provision of all air quality and noise reports, readings and data received by the Council. There has also been a request regarding the Council's assessment of whether a statutory nuisance has arisen from the opencast operations. We have advised that the Information Commissioner should review the Council's response. However, for the sake of completeness and if you consider that the earlier requests did not cover those listed below we request that the Council provide the following:

- a) a copy of all reports and complaints of noise, dust, air pollution and other environmental problems arising out of the opencast operations since operations commenced to date;
- b) details of your responses to those complaints including your immediate response to the person reporting (e.g. that you will investigate the matter, you will advise Miller Argent) and the outcome/conclusion of any action taken; and
- c) a copy of all the information relating to monitoring of noise, dust and other air pollution carried on at the site and in the local community.

This information is classed as environmental information under the Environmental Information Regulations 2004 and we therefore look forward to receiving this within the next 20 days.

Please also note that we have sent a similar letter to Miller Argent for their consideration. A copy of this request was forward to Mr David Dier at the Council.

Yours faithfully

Richard Buxton



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2009/0950

13270



The Queen, on the application of

Condron –v– Merthyr Tydfil Borough Council & Others

ORDER made by the Rt. Hon. Lord Justice Richards

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review

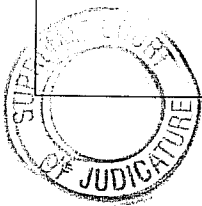
Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

1. Adjourned to an oral hearing on notice to all parties, to be listed as an application for permission to appeal with the appeal to follow if permission is granted.
2. Time estimate for the hearing: ½ day.

Reasons

The applicant has a double hurdle to surmount, in that it must be shown not only that there is an arguable substantive case meriting the grant of permission to apply for judicial review but also that the judge was not entitled to reach his alternative conclusion that permission should be refused on the ground of delay. Since, however, each issue engages issues of EU law on which the court may be assisted by oral submissions, I think it better for the matter to be considered at a hearing at which the court can reach a final decision on whether the judicial review claim should be allowed to proceed.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)



Signed: *John Richards*
Date: 6 August 2009

Notes

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 4.14A of the Practice Direction.
- (3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

Case Number:



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales
MERTHYR TYDFIL
COUNTY BOROUGH COUNCIL
CHIEF EXECUTIVE'S OFFICE

Parc Cathays / Cathays Park
Caerdydd / Cardiff
CF10 3NQ

The County Borough Solicitor
Merthyr Tydfil County Borough Council
Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

31 JAN 2001

CFKE
A
A
A
A

Eich cyf / Your Ref:
Ein cyf / Our Ref: A-PP152-99-002

30 January 2001

Dear Sir,

**NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949
THE ACQUISITION OF LAND ACT 1981
THE MERTHYR TYDFIL COUNTY BOROUGH COUNCIL (EAST MERTHYR
RECLAMATION SCHEME PHASE III) COMPULSORY PURCHASE ORDER 1997**

1. I refer to your Council's applications for

- (i) confirmation of the Merthyr Tydfil County Borough Council (East Merthyr Reclamation Scheme Phase III) Compulsory Purchase Order 1997; and
- (ii) the grant of a certificate under Section 19 of the Acquisition of Land Act 1981 in respect of proposed exchange land.

2. The Compulsory Purchase Order (CPO) was made under the provisions of Sections 89(5) and 103 of the National Parks and Access to the Countryside Act 1949. The land the subject of the CPO comprises some 6 plots of land, totalling 196.87ha in area, located to the east of Merthyr Tydfil beyond the A4060 trunk road and mainly within the Merthyr and Gelligaer Common. The stated purpose of the CPO is

"to purchase land compulsorily for a comprehensive derelict land reclamation scheme in the Merthyr Tydfil area (to include the removal of underlying coal deposits by opencast methods and the stabilisation of old coal and ironstone working voids, to improve the visual amenity of the area and following implementation of the scheme to put to more beneficial use) the land (including the underlying mines and minerals other than those vested in the Coal Authority)."



BUDDSODDWR MEWN PORL
INVESTOR IN PEOPLE

3. The land proposed to be exchanged is mainly comprised in 2 separate blocks of about 24ha at Gilfach-yr-encil and 180ha at Pendducae Farm, their northern edges located about 1.5km south of the CPO land. A further 3ha area of exchange land is located just to the north-west of Bryn Caerau Farm, Cwm Bargoed and a smaller plot of 0.4ha to the north-west of the A4060 trunk road at Merthyr Tydfil.

4. A public inquiry was held into the statutory and non-statutory objections to the CPO and exchange certificate and a copy of the Inspector's report of that inquiry is attached as Annex 2 to this letter. His conclusions are attached as Annex 1 to this letter.

5. At the inquiry the Council requested that the CPO be modified by deletion of exchange land, plot 3 (0.4ha to the north-west of the A4060) and the substitution thereof of a new plot 3, again of 0.4ha, adjoining the northern boundary of the Pendducae Farm land.

6. Plots 3 and 6 of the CPO land are in the ownership of the National Assembly and, at the time of the inquiry, no representations had been received from the Assembly on the proposed acquisition.

7. Responsibility for determining these two applications has been delegated to me by Sue Essex AM, Minister for Environment at the National Assembly.

SUMMARY OF THE DECISIONS

8. The formal decisions are at paragraph 43 below. The CPO is not being confirmed and no certificate is being granted.

REASONS FOR THE DECISIONS

9. In considering the applications I have had regard to the advice in Welsh Office Circular 4/95 - "Compulsory Purchase Orders: Procedures" - and, in particular, that the Assembly should be satisfied that the proposed scheme could proceed without planning difficulties and that compulsory purchase orders should not be made unless there is a compelling case in the public interest. While I accept the parties' submission that the Circular provides guidance only and has no statutory force, it remains guidance to which I must have regard in my consideration of the applications.

10. The objectors to the CPO and certificate have submitted that the 1988 planning permission cannot be relied on as authorising the carrying out of Phase III of the Reclamation Scheme. While only the Courts can give an authoritative ruling as to the effect and validity of that permission, the Assembly will need to be satisfied that, *prima facie*, the permission is valid and extant.

11. I agree with the Inspector's reasoning leading to his conclusions that

- (i) the differences between the wording of the initial resolution under Regulation 4(1) of the 1976 General Regulations and that of the permission granted were not material and did not render the permission invalid; and
- (ii) the 1988 planning permission was a 'full' permission subject to a 5 year time limit expiring on 3 November 1993.



12. As regards the alleged non-compliance with conditions, I agree with the Inspector's conclusions in paragraphs 15.10 – 15.13 of his report that the 1988 permission was lawfully implemented in respect of Phase II of the Reclamation Scheme. I do not, however, agree with his conclusions as to the effect of the conditions in relation to Phase III.

13. I acknowledge that the judgement in *Agecrest –v- Gwynedd County Council JPL (1998) 325* provides support for discretion to allow phased development and I accept that Condition No 2 attached to the 1988 planning permission provided for the phasing of development. It is important, however, to consider the wording of that condition, which was:

"2. Prior to the commencement of any works on site a detailed scheme for the working of the site shall be submitted to and approved by the County Planning Authority. The scheme shall include the following details:-

- (1) fencing of the boundary of the site;
- (2) location of office accommodation and plant maintenance facilities;
- (3) direction, method, depth and phasing of working;
- (4) position, height and shape of baffle embankments and screening bunds;
- (5) position, height and shape of topsoil and overburden storage mounds;
- (6) method of treatment of embankments, bunds and mounds referred to in (4) and (5) above;
- (7) diversion and/or relocation of statutory undertakers' apparatus."

14. Throughout the inquiry the supporters of the scheme submitted that the 1988 permission was a single planning permission in respect of a single site, and that line of argument is supported by the wording of Condition No 2, which refers to "site" rather than "sites". I conclude, therefore, that all of the requirements of sub-paragraphs (1) – (7) had to be satisfied before development authorised by the permission commenced. Sub-paragraph (3) required, among other things, the submission and approval of details of phasing of working, and, in the light of the wording of the permission and that condition, I would expect that to have included details of Phase III as well as Phase II of the scheme. I do not consider that the planning statement referred to in Condition No 1 of the permission is of any assistance here because of the proviso at the end of that condition.

15. As the necessary details in respect of Phase III were not submitted and approved before works began on the site, there is uncertainty as to whether the 1988 permission can be used for the CPO scheme; I cannot therefore be satisfied that the proposed scheme could proceed without planning difficulties.

16. Objections were raised about the placing of authorised details on the planning register. In that respect I agree with the Inspector's conclusion at paragraph 15.20 of his report, and for the reasons he gives, that the registration procedure has not been breached. I also agree with him that, even if the procedure had not been carried out, it would not have invalidated the permission.

17. At paragraphs 15.21 – 15.24 of his report the Inspector considers the issue of whether Celtic Energy may implement the 1988 planning permission as agents of the Council. While Regulation 4(7) of the 1976 General Regulation provides that the permission granted under

Regulation 4(5) enures for the benefit of the Council and not the land, I agree with the Inspector that there is nothing to prevent the Council using an agent to undertake works on their behalf.

18. The Inspector considered that the 1993 and 1997 agreements provided sufficient control over the works to ensure that they are carried out in accordance with their wishes. I take the view, however, that, as the Council's legal interest in the land will be transferred to Celtic Energy shortly after confirmation of the CPO, that control would be exercised as local planning authority and not as a person or body having a legal interest in the land. As Caerphilly County Borough Council have indicated that they have no objection to the development I do not consider the fact that they were not party to the 1997 agreement as being a material consideration in this issue.

19. In the light of the comments above and given the concerns outlined by the Inspector in paragraphs 15.23 and 15.24 of his report, it is unlikely that the proposed scheme could proceed without planning difficulties.

20. As regards the objections that the 1988 permission was invalid because it was not accompanied by an environmental statement, I do not uphold those objections. Under the 1976 Regulations the resolution passed under Regulation 4(1) is taken to be the planning application for the development concerned, and that resolution was passed on 3 June 1988. As the Assessment of Environmental Effects Regulations did not come into force until 15 July 1988 and were not retrospective, the resolution passed under Regulation 4(1) of the 1976 Regulations did not require an environmental statement.

21. Submissions were also made that the CPO itself was a 'development consent' under EC Directive 85/337 and should, therefore, itself be accompanied by an environmental statement. I do not agree with those submissions.

22. Article 2 of the Directive defines 'development consent' as

"the decision of the competent authority or authorities which entitles the developer to proceed with the project"

with 'project' being defined as

"the execution of construction works or of other installations or schemes, other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources".

23. In my opinion the 'development consent' which enables the development to proceed is the planning permission and not the CPO. That merely enables the Council to acquire land compulsorily for the purposes of its functions under Section 89(5) of the 1949 Act and does not 'enable the developer to proceed with the project' – the planning permission does that.

24. For the reasons given above, it is unlikely that the 1988 planning permission can be relied on as authorisation for the works proposed for Phase III of the Reclamation Scheme.

25. As I have indicated above, Welsh Office Circular 4/95 advises that I must be satisfied that the scheme proposed should not be blocked by planning problems. With this in mind, I note that the Council have indicated that even if the 1988 planning permission is invalid, they are satisfied that there are no problems with the scheme and that the Circular is only

advisory. As I have also indicated above, advisory or not, I must have regard to the guidance in that Circular.

26. Were an application for planning permission to be made now, it would be for the Council to determine whether it should be accompanied by an environmental statement. The Inspector, at paragraphs 15.36 – 15.39 of his report, has also raised a number of concerns he considers relevant to the consideration of Phase III. While I cannot comment on the merits of any of those concerns, that being a matter for the Council in the first instance, nor are my comments to be taken as prejudging the outcome of any planning application or an appeal, were it to come to that, I do not consider that I can reasonably conclude that there would be no planning problems in respect of the proposals for Phase III.

27. Section 89 of the 1949 Act enables a local planning authority to acquire land compulsorily for the purposes of any of their functions in Section 89. At paragraphs 15.40 – 15.51 of his report the Inspector considers the stated purpose of the CPO and the use of powers under Section 89 of the 1949 Act. I agree with his reasoning in those paragraphs and share his conclusion that the scheme proposed under the CPO goes beyond that for which Section 89 of the 1949 Act can provide.

28. Objectors to the scheme have submitted that as only 30% or 50% of the CPO land is derelict, neglected or unsightly there is no support for the scheme to take all of the land for reclamation and that the derelict, etc, land could be reclaimed by works on that land alone. While I acknowledge that it would be possible for me to reduce the area of land the subject of the CPO, should there be justification, the Council and Celtic Energy have indicated that all of the CPO land is necessary for the successful implementation of the scheme. Consequently, that is the basis on which the CPO has been made and the basis on which I have considered the CPO.

29. The criteria to be applied in the consideration of the CPO and the powers available to the Assembly are dictated by the provisions of the legislation under which the CPO is made. I have noted the submissions put forward about the need, both locally and nationally, to utilise the coal reserves on the CPO land but offer no comment in that respect as it is not a consideration that can be taken into account under the provisions of Section 89 of the 1949 Act.

30. As regards the inclusion of Crown land within the area being compulsorily acquired, no agreement has been provided by the Assembly for its acquisition. Consequently, were the CPO being confirmed, I would have deleted that land from the scope of the CPO. This could have been done without prejudice to the overall scheme. I also agree with the Inspector that the matters about gas and gold (paragraph 15.54 of his report) would not affect confirmation of the CPO.

31. I have considered the objections in relation to the omission of the 7.97ha of land owned by the Council and Celtic Energy from the scope of the CPO but take the view that they cannot be sustained. The fact that the land would be used as part of Phase III is self evident and there is nothing in the evidence to indicate that objections from commoners to the loss of this area of land would be any different to those made in respect of the loss of the CPO land generally.

32. Submissions were made about the validity of tracks provided on the exchange land but I do not consider that that has any bearing on the CPO.

33. In paragraphs 15.62 – 15.71 of his report the Inspector discusses the objections to the validity of the CPO made on the basis that negotiations with the landowners were not properly conducted and prevented voluntary agreement as an alternative to compulsory acquisition.

34. I offer no comment on the Inspector's conclusion in paragraph 15.69 of his report about the Council's lack of propriety in the negotiations; this is not an issue which was within the Inspector's remit in his considerations of the merits of the CPO nor is it an issue before me in my deliberations on whether or not to confirm the CPO. I note that it was open to both Celtic Energy and the CLH Ltd consortium at all times to seek arbitration where they could not agree on the basis for the purchase/sale of interests in the land. Subject to those comments, I agree with the Inspector's conclusions in paragraphs 15.62 – 15.69 of his report. The fact that there were negotiations over several years cannot be ignored and I accept that the stage can be reached where the continued pursuit of negotiations is unlikely to be fruitful. On the facts of this case I am satisfied that the requirements of Welsh Office Circular 4/95 in respect of negotiations have been met.

35. As to whether Phase III would go ahead without compulsory acquisition of the land, I agree with the Inspector that it is not possible to reach a conclusion in that respect.

36. Negotiations were also carried out with the commoners and I agree with the conclusion reached by the Inspector in paragraphs 15.74 and 15.75 of his report that the objections made by various commoners in this respect would not provide reason to refuse confirmation of the CPO.

37. In paragraphs 15.76 – 15.85 of his report the Inspector considers the need for reclamation and the cost of that and Phase III and I see no reason to disagree with his conclusions in those paragraphs. I note the Council's submissions that the proposals for Phase III would mean that reclamation would be carried out at no cost to the public purse. That is one of the considerations to be taken into account but is not an overriding factor.

38. As regards the submissions about markets, alternative schemes and sterilisation of coal reserves, I agree with the conclusions reached by the Inspector on those issues in paragraphs 15.86 – 15.93 of his report.

39. As it is proposed not to confirm the CPO, I think it would be inappropriate to grant a certificate under Section 19 of the 1981 Act. It may be useful, however, for you to have the Assembly's views on the exchange land. A comparison of the exchange land and the land the subject of the CPO was carried out by the Inspector in paragraphs 15.94 – 15.122 of his report. I agree with all of his conclusions except those in respect of the effect of the access arrangements for the exchange land on the other qualities of the exchange land. I accept that the access arrangements are not as good as those which exist for the CPO land, but there is nothing in the evidence to lead me to the conclusion that they would be likely to cause such problems or difficulties as to override the other qualities of the exchange land and prevent that land from providing an overall equality of advantage. I consider, therefore, that were the CPO being confirmed, the certificate applied for under Section 19 of the Acquisition of Land Act 1981 would have been granted.

40. Representations from other objectors are considered by the Inspector in paragraphs 15.123 – 15.143 of his report and I agree with the conclusions he has reached in respect of each of those objections except, in the light of my comments in the previous paragraphs, where they relate to the qualities of the exchange land.

41. The Inspector's overall conclusions on the CPO and exchange land certificate were:-

"15.145 The inquiry evidence and my analysis of the objections has showed that the driving force behind the negotiations to acquire the Order land and the Phase III scheme as it exists today is CEL. The Council as acquiring authority have relied on the vague terms of a 12 year old deemed planning permission which still lacks detail and the provision of exchange land by CEL which they seem to have little knowledge of themselves. The main outcome of this has been a concentration on the merits of Phase III in respect of coal extraction, whereas I must assess the case for reclamation in the public interest against the disturbance of the scheme itself and the injury to private interests.

15.146 Dealing first with the benefits of the scheme, I accept that there would be visual improvement to the western side of the Order land in particular. There would also be a reduction in potential hazards which exist on that land, although the extent of risk to public safety at present appears slight. The Council have also claimed that account would be taken of nature conservation and that the landscape would be restored to a high quality and amenity status, but as no agreed details of the proposals in respect of these matters are available I cannot reach a firm conclusion as to the benefit which might accrue. A further benefit is that the scheme would complete the EMRS. Finally, the Council have pointed out that they consider an important benefit is that there would be no cost to the public purse.

15.147 Turning to the disadvantages of the scheme, the first point to make is that several objectors from the public at large considered that there was no overriding need to reclaim the Order land as they felt it serves the recreational needs of local people adequately as it is. Second, the evidence shows that of the land to be acquired only about half is derelict, neglected or unsightly and needs reclamation. The remainder is land which in the main is unspoilt and only required to provide overburden storage. There is bound to be an adverse environmental impact on this 'other land' and it will be dominated by the storage mound for at least 8 years.

15.148 Third, it is generally accepted that opencast mining does have some adverse impact on a locality from such factors as noise, dust, traffic, water pollution and visual intrusion, even if that harm is found to be insufficient to outweigh proven benefits of extraction in any particular case. However, in this case the CPO is concerned with the issue of reclamation, not any other benefits which might normally be claimed for coal. Consequently, I see the coal extraction as the operational means chosen to achieve the reclamation and in that context I believe it is excessive and harmful. In order to achieve the limited reclamation benefit of the Phase III scheme the Council are proposing a private coal mining operation over a period of some 8 - 10 years, with all its associated disturbance and land requirements. It must be added that there has been no agreement on the conditions of the 1988 planning permission which might have alleviated some of the amenity and environmental concerns.

15.149 Fourth, as I have previously concluded, it is difficult to assess the extent to which a reclamation scheme will improve the existing landscape where no details of the final landform and landscaping have been agreed. Also, no mention has been made of how the unsightliness of the land caused by vandalism and fly tipping would be dealt with. The final disadvantage is the loss to private landowners and other interests from the acquisition which itself is a public interest. They and the commoners should not be disturbed unless there is good reason for that disturbance.

15.150 My consideration of all the foregoing advantages and disadvantages, together with the other matters referred to in my conclusions, including my finding that objection 6 should be upheld, leads me to find that no compelling case in the public interest has been made to confirm the Order.

15.151 Turning to the section 19 exchange land certificate, it is clear that the comparison of the Order and exchange lands shows they have significant differences of character in terms of agricultural status, accessibility, topography and safety, and ecology. My findings on the objections relating to these matters suggest that both areas have a broad parity in terms of agricultural use, although the exchange land does have steeper slopes which might cause some difficulties. The exchange land is not as accessible to the public as the Order land and some commoners would have to travel greater distances to it by vehicle. The exchange land has considerable ecological interest, but I do not find this to be an overriding consideration. There are safety and stability difficulties with both the Order and exchange lands. In all the circumstances, it is my conclusion that the exchange land advantages are not sufficient to provide an overall equality of advantage with the Order land. Accordingly, a section 19 certificate should not be given."

The Inspector recommended that neither the CPO nor the Section 19 certificate should be confirmed.

42. I agree with the Inspector's overall conclusions on the CPO and, for the reasons given by him and in the light of the conclusions I have reached above on the CPO, I accept his recommendation that the CPO is not confirmed. I disagree with his conclusions in respect of the effect of the access arrangements for the exchange land and, for the reasons given above, and were the CPO being confirmed, I would not have accepted his recommendation that no certificate should be granted.

FORMAL DECISION

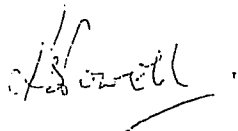
43. For the reasons given above, and in exercise of the responsibility delegated to me, I hereby refuse

- (i) to confirm the Merthyr Tydfil County Borough Council (East Merthyr Reclamation Scheme) Compulsory Purchase Order 1997; and
- (ii) to grant the certificate applied for under Section 19 of the Acquisition of Land Act 1981.

44. While there is no statutory provision for challenging either of the decisions contained in the previous paragraph, it may be possible to apply for leave to seek judicial review of those decisions. Procedures for making such applications are governed by Rules of Court, which require applications for leave to be made "promptly, and in any event within 3 months from the date when the grounds for the application first arose". That 3 month period is not an entitlement and the Court may refuse an application made within the 3 month period on the basis that, on the circumstances of the case, it was not made promptly.

45. Returned herewith are the two sealed copies of the CPO.

Yours faithfully,



K S POWELL
Head of Planning Division

Authorised by the National Assembly for Wales
to sign in that behalf



GARY THOMAS M.C.I.H.
Corporate Chief Officer Housing and Technical Services
Prif Swyddog Corfforaethol Tai a Materion Technolegol

Councillor J Leon Stanfield
1 St Johns Close
Cefn Coed
Merthyr Tydfil

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROL MERTHYR TYDFUL

Canolfan Dinesig
Stryd Y Castell
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Dyddiad/Date : 8 December 2003

Ein Cyf/Our Ref.: DD01/JULIE
Eich Cyf/Your Ref.:

Llinell Uniongyrchol/Direct Line : (01685) 725260
Gofynnwch am/Please Ask For : David Dier

Dear Councillor Stanfield

FFOS Y FRAN – CONTAMINATED LAND STRATEGY
ENVIRONMENTAL PROTECTION ACT 1990

This letter is being sent to all councillors as a result of a question on this topic asked by the Mayor at a recent Council meeting.

The council has adopted a strategy for managing the historical legacy of contaminated land within the Borough. This strategy was reported to Council in October 2002 and is a legal duty under the above legislation. In summary the approach to contaminated land is to only intervene when there is a proven risk either to public health or to the environment. This involves being able to demonstrate three particular elements before any detailed examination of the area in question needs to be undertaken; that there is a likelihood that significant contamination exists, that there is an adjacent population or environment that is capable of being harmed by that contaminant and thirdly that there is a known pathway for that contaminant to reach that receptor. Where these three issues are met then there is obviously a need for more detailed investigations to be undertaken to determine the extent of the hazard and to evaluate whether any intervention or precautionary action needs to be taken.

The situation in this Borough is that there are large areas which have been subjected to potential contamination usually from industrial uses. A detailed study was carried out by consultants in 2001 to identify as many areas as possible and to try to determine what the likely contaminants were, this is held as a geographical database. Our analysis of that database has shown no specific areas where there is a situation whereby all three elements exist to pose a direct threat. Clearly some of the areas identified have more potential to become a risk than others and so based upon the likely contaminants all the areas are given a classification ranking from 1 – 5 (1 probably uncontaminated to 5 statutorily defined as being contaminated).

Progressively the sites will be dealt with in a number of ways, where a site is to be developed at the planning stage it can now be identified, and detailed investigations would be undertaken by the developer so that appropriate remediation or precautions can be introduced as part of the development if necessary. Some sites are in the ownership of the Council or other statutory bodies and before they can be disposed of there will need to be formal testing undertaken. Finally there may be some sites which cause complaints or where there is further information

which comes to light which results in them presenting a significant risk to receptors and in that situation some intervention may become necessary.

With regard to the Ffos y Fan development and the three tips contained within the boundary of the site we now know rather more information about them as a result of Miller Argent's investigations. The area as a whole was identified on our geographical database as a contaminated site containing largely inert waste. The tips have now been classified as category 3 "potentially contaminated for less sensitive land uses" this is based upon there being identified a number of hot spots of contaminated material and them to be producing some methane etc from the decomposition of biodegradable material. However this classification does not imply that the tips in their present state or in any future anticipated circumstances pose a significant risk to humans, animals or the environment.

Clearly there is a need to keep the situation under review and the management of the tips if they are to be removed needs to be carefully organised. I trust this outline of the situation as we currently perceive it to be with regard to the tipped material at Ffos y Fan is satisfactory.

Yours sincerely

D Dier

DAVID DIER
PRINCIPAL ENVIRONMENTAL HEALTH OFFICER

The Ffos-y-fran Newsletter

The Newsletter for the Ffos-y-fran Land Reclamation Scheme Issue 003 Spring 2009



Tips cleared successfully

The Ffos-y-fran Land Reclamation Scheme has now been in successful operation for over a year with significant landmarks reached. Progress is being made on many fronts – and much hard work is being done to balance the civic, environmental and commercial interests for the benefit of all.

The clearance of three potentially dangerous rubbish tips – which once loomed over the town of Merthyr Tydfil – is now finished. The remedial excavation work was completed in early January 2009 and represents a tremendous boost to the local community, with a saving of approximately £30 million to council

taxpayers of Merthyr Tydfil County Borough Council.

The three tips, Hoover, Merthyr landfill and Tip 13, were not only a financial liability but had become potentially hazardous, especially due to soil contamination, landfill gas and toxic seepage into the water table. A prime condition of Miller Argent's work at Ffos-y-fran was that remedial work must first be started on the landfill sites before any coal extraction from these sites could be undertaken.

More than 350,000 tonnes of waste – including domestic, commercial and industrial waste – has

Welcome to the third edition of the Miller Argent Newsletter. Thank you for your feedback and comments.

The Newsletter is intended to help inform the residents of both Merthyr Tydfil and Caerphilly about the Ffos-y-fran Land Reclamation Scheme. We welcome your comments, suggestions and questions. Please email us at: admin@millerargent.co.uk

The Scheme

Continued from front page

been safely processed and treated. More than 50,000 tonnes has been segregated and removed from site with dangerous and toxic elements being taken elsewhere for treatment and disposal. Other non-hazardous materials have been disposed of at the nearby Trecatti site, which is a registered landfill. The work has all been carried out within the controls and approval of both the local authority and the Environment Agency.

James Poyner, a Director of Miller Argent, said: "This is a significant achievement. In many respects it is a victory for local civic leaders working hand in hand with the private sector. I think it is a model that could be made to work elsewhere in the UK.

"The clearance work on the tips has been painstaking and arduous at times. We had to call in the bomb disposal team when a live World War II mortar bomb was found in Tip 13 – this was destroyed by a controlled explosion.

"I think the people of Merthyr can feel some sense of pride – that these

dangerous liabilities have been removed and neutralised, without incident or cost to the community. This has been possible because of the joint work with Miller Argent, the contractors, the Council and the Environment Agency."

Stephen Tillman, a Director of Miller Argent, said: "There will be a number of stepping stones in this project. But the removal and disposal of toxic materials that might have endangered the health of local people for many generations to come is something that should bring a sense of satisfaction to everyone in Merthyr."

Councillor Jeff Edwards, Leader of Merthyr Tydfil County Borough Council, said: "The Council is pleased that the three long-term refuse tips located at Ffos-y-fran have been removed in a controlled, prompt and professional manner.

"The Council and citizens of the County Borough were advised in 2003 of the liabilities that could fall upon the council taxpayer were the land reclamation scheme not to have proceeded. It was estimated at that time that removal of the tips would cost

between £6.5 and £11.5 million and, as can be seen, this upper figure has increased almost threefold from the original estimate. Were the £30 million for remediation of the tips to have been required from Council resources then this may have resulted in an average cost to every council taxpayer in excess of £1,000."

Councillor Edwards said the removal of the tips is not the only benefit that has accrued to the Council. He pointed out that the realignment of the Bogey Road, and the continued re-payment of the unsuccessful Compulsory Purchase Order, amounting to £1.1 million, which were to have been paid by the Council, and receipt of monies into the Community Benefit fund. "All of these have already benefited the local people and will continue to do so."

He added that the Council looks forward to continuing the good working relationship with Miller Argent and "to securing future benefits to be seen and appreciated by existing and future generations".



Community News

Liaison Committee Meetings

The Liaison Committee Meetings, held in Merthyr Tydfil County Borough Council, continues to be a useful and productive forum where views are aired and members are advised of Ffos-y-fran issues that may impact on the community.

The committee is composed of a number of Merthyr Tydfil County Borough Councillors, full-time officials from MTCBC's Environmental Health and Planning Departments, representatives from the Environment Agency and a group of local residents who live near the site. Councillor David Hardacre represents Caerphilly County Borough Council on the committee. Miller Argent remains highly committed to working with the committee to resolve any

matters that are causing local concern.

The meeting is chaired by Councillor Julian Amos, of the Dowlais ward, and Miller Argent is normally represented by Robert Jones, Miller Argent's Operations Manager. Robert feels the views and work of this committee are hugely important in building and maintaining excellent community relationships. At the committee meeting in November 2008, it was heard that there had been six complaints about noise from the site. These were all recorded and dealt with.

Councillor Amos said: "The Liaison Committee is proving to be an excellent forum for the exchange of information and concerns. I have been struck by the highly

constructive manner in which all members conduct themselves.

"It is quite obvious that Miller Argent is making every effort to address the concerns of residents and be good neighbours not only through its speedy response to the concerns of the residents who contact them either directly or via one of the regulatory bodies, but also by its readiness to note, act on and report back on concerns raised at the Liaison Committee itself."

He continued: "Local authority elected members are able to articulate the concerns of their constituents and the regulatory bodies are able to raise any concerns they have or provide advice to residents."

Point of View: Resident Member, Ron Yandle of Mount View

Mr Ron Yandle has been a resident's member of the Liaison Committee since its inception in 2007. Speaking after the Liaison Committee Meeting in November 2008, Mr Yandle, who lives in the cul-de-sac at 3 Mount View, which is within 40 metres of the edge of the site, was asked for his personal experiences living close by.

"It's actually not been as bad as I expected. But I think one of the main reasons for that is in the last 18 months

we've had a heavy predominance of rain. April 2008 was a reasonably dry month and there was at least four or five days of easterly wind, when we had black dust everywhere. This was recorded and admitted."

So weather conditions do have a definite impact on local conditions.

"My fear would be that if next spring and summer [2009] was exceptionally dry, combined with easterly wind, then we could have a lot of dust problems. And

there is not a lot, I understand, that we can do about it. Dust is dust and it blows with the wind."

He said the worst of the noise was when the box cut began, although inside his double glazed sitting room with the television on, the noise was not discernible. Mr Yandle is waiting to see what happens over a prolonged period of dry weather, with easterly winds. He said he was happy with Miller Argent's responses to enquiries so far.

Mystery unmasked?

This newsletter tries to be scrupulously honest about what is going on at Ffos-y-fran. So it is galling to discover that a newspaper of The Guardian's stature doesn't bother to check its facts, which then fuels misinformation. It reported on 16 April 2008, that Friends of the Earth Swansea were "rather shocked" to find out that Argent is wholly owned by BT's pension scheme. This was then repeated in a local protest group's website with the headline "Argent Unmasked!" This is astonishing. Miller Argent has nothing to hide. This fact has been consistently declared by Miller Argent at every public meeting and presentation and if any of the protesters had taken the time to read James Poyner's statement of evidence to the Welsh Assembly's public inquiry, the relationship was clearly stated on Page 9 on 2 August 2004. This is publicly available information and there is nothing secret or sinister about it.

Education and Training Centre open for local groups

The Education and Training Centre at the Cwmbargoed Disposal Point is already a welcoming gathering place – and a handy resource for those wishing to use the latest digital facilities. A number of local groups, including school projects, have taken up the opportunity to come and use the building.

The Education and Training Centre is equipped with computer connections for laptops, and a large-screen projector. The Centre also offers a starting point for a visit to the nearby ancient wooded valley at Cym Golau, a natural area being maintained and preserved by volunteers and ecological programmes supported by Miller Argent. Anyone interested in using the Education Centre should contact Miller Argent on 0870 111 5600.

Minibuses are a popular winner

The new minibuses for the community are also proving a hit. More than 40 local groups in Merthyr have applied to use the minibuses, including youth and church groups, disability charities, and boys and girls football teams. A booking system has been set up for the 17-seater bus and the 15-seat vehicle with wheelchair access for two wheelchairs. For information contact Miller Argent on 0870 111 5600.



Paul Stookes

From: "Paul Stookes" <pas@richardbuxton.co.uk>
To: "David Yates" <David.Yates@bassetlaw.gov.uk>
Sent: 28 April 2008 21:09
Subject: Re: Littlewood - Bassetlaw District Council

Mr Yates

Thank you for your note on costs. I am a little surprised by your provisional estimate. Would you mind providing a breakdown of your estimate?

Paul Stookes
Richard Buxton Environmental & Public Law
19B Victoria Street, Cambridge CB1 1JP
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e-mail. pas@richardbuxton.co.uk
www.richardbuxton.co.uk

----- Original Message -----

From: David Yates
To: law@richardbuxton.co.uk
Cc: David Armiger ; David Hunter ; Neil Taylor
Sent: Monday, April 28, 2008 10:54 AM
Subject: Littlewood - Bassetlaw District Council

Buxtons
Solicitors Cambridge

Dear Mr Stookes

Your faxed letter relating to costs in respect of your client [Mrs Littlewood] is noted and that you have received a further notice of funding in respect of the conditional fee arrangement entered into.

In order that you may calculate the premium payable in respect of the CFA, I am without prejudice prepared to confirm that I am making a provisional assessment at this stage of all inclusive costs to be incurred by Bassetlaw District Council as Defendant in the action by a figure representing not in excess of **One hundred and thirty five thousand pounds [£135,000].**

This figure is based upon a 2 days hearing in the High Court on 21/22 May and work carried out to date.

I would reserve the right to amend this figure in the light of your current intentions to seek an application for an injunction today.

David Yates LL.B MA M.Phil
Council Solicitor
Queens Buildings
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fax 01909 533703

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Paul Stookes

From: "David Yates" <David.Yates@bassetlaw.gov.uk>
To: "Paul Stookes" <pas@richardbuxton.co.uk>
Sent: 29 April 2008 07:35
Subject: Re: Littlewood - Bassetlaw District Council

Mr Stookes

I really cannot give a breakdown. I am trying to estimate an unknown in that Counsel's fees are not yet established, but I suspect with QC and junior they will exceed £80,000.

The situation is that, your clients are effectively increasing the workload on a daily if not an hourly basis. That is clearly their choice, but with the exercise of that choice comes the prospect of increasing costs. My estimate is taking account of the history to date and the likelihood that your client will continue with what has been described [not by me] as "frenzied activity" to cause a total closure of activity on the Steetley site.

The District Council does not have a large well qualified legal specialist staff and as a consequence reliance is being placed more on outside resources to deal with the legal challenge. That dependence is reflected in the costs. I have placed a figure of not in excess of £135k to cover all contingencies - if I estimate less, then I would be criticised at the conclusion of the matter if my estimate fell short of actual costs.

David Yates LL.B MA M.Phil
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