

## **EAST AYRSHIRE COUNCIL**

**SOUTHERN LOCAL PLANNING COMMITTEE: 08 MARCH 2002**

**02/0039/FL: PROPOSED EXTENSION TO EXISTING SITE FOR THE  
WINNING AND WORKING OF COAL BY SURFACE MINING METHODS AND  
RESTORATION OF THOSE AREAS TO A MIXTURE OF WOODLAND AND  
MOORLAND, BURNFOOT MOOR OPENCAST SITE, MUIRKIRK**

**APPLICATION BY UK COAL LIMITED**

### **EXECUTIVE SUMMARY SHEET**

#### **1. DEVELOPMENT DESCRIPTION**

1.1 Full planning permission is sought for an extension to the existing operational opencast site by an area extending to 2.7 hectares to allow the winning and working of seams of coal that outcrop within this relatively small extension area.

1.2 The planning consent for the Bankend extension permitted the extraction of 750,000 tonnes of coal from the site over a period of 42 months. However, following the grant of planning consent, the applicant UK Coal (formerly RJB Mining) instigated a tendering process to select a competent contractor for the extraction operations. During this tendering process, potential contractors expressed concerns over the severe geological conditions that prevailed within the Bankend extension area together with a general inability to extract the consented tonnage without compromising site safety.

1.3 In Summer 2001, UK Coal appointed Crouch Mining as the site contractor to work a reduced scheme to extract some 450,000 tonnes of coal from the site, this to be extracted over a shorter timescale. Excavation operations will not now involve the winning and working of coals within the deeper seams. However, since extraction operations commenced on site, the applicant states that geological conditions within the Bankend extension area are more complex than predicted by them and Crouch Mining. The extent of minor geological faulting in the north-eastern corner of the site is so severe that the coal outcrops to be worked within the existing site boundary are in fact outcropping beyond the boundary .

1.4 The applicant further states that had this geological arrangement been known at the time of making the Bankend extension application, then this area would have been included in the application site. This 2.7 hectares area contains approximately 30,000 tonnes of coal. Furthermore, given that the strata is more vertical than expected, coal seams expected to be won at a depth of between 30 to 60 metres would be unobtainable without first

removing the strata immediately above within this area, as the risk of slope failure would be too great.

1.5 The working of this extension area would be undertaken in accordance with the current approved method of working for the existing site operations. There will be no change to the current hours of operation, production levels or traffic movements. The operations within the proposed extension area will be undertaken within the consented timescale of the Bankend extension.

1.6 In terms of potential impacts, it is anticipated that noise levels measured at the monitoring points adjacent to receptors for excavation in the proposed extension area will be lower than those previously predicted and within the noise limits set by condition on the Bankend extension planning consent. Although blasting operations will take place within the proposed extension area, the area lies at greater distance from residential areas than the current site operations and the impact from blasting operations is therefore likely to be at a lower level.

1.7 With regard to the restoration of the proposed extension area, it is already included as part of the approved restoration plan for the Bankend extension area, where the restoration proposals covers a wider area beyond the limits of the application site. Consequently, the restoration proposals will be unchanged.

## **2. RECOMMENDATION**

2.1 It is recommended that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily amended the existing agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matter described in Section 8.4 of this report.

## **3. CONCLUSIONS**

3.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 of the report, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be consistent with the policy provisions of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) which is a prime material consideration in the determination of this application.

3.2 The proposed development represents a modest extension to the existing approved scheme for the Bankend extension development. The

proposal to extend the workings will not result in the proposed operations encroaching any nearer to residential properties than the existing operations. The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations. The existing Burnfoot Moor opencast site has a current consent for a three and a half year period and the proposed operations will be undertaken within this timescale.

3.3 No objections have been received with respect to the proposed development either from consultees or third parties.

3.4 Should the Committee agree to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 has been duly amended to include the additional extension area within site plan annexed to this Agreement.

### **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application would not require to be referred to the Development Services Committee as it would not be a significant departure in terms of principle from the East Ayrshire Opencast Coal Subject Plan.

**Alan Neish**  
**Head of Planning and Building Control**

**Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority**

## EAST AYRSHIRE COUNCIL

SOUTHERN LOCAL PLANNING COMMITTEE: 08 MARCH 2002

### 02/0039/FL: PROPOSED EXTENSION TO EXISTING SITE FOR THE WINNING AND WORKING OF COAL BY SURFACE MINING METHODS AND RESTORATION OF THOSE AREAS TO A MIXTURE OF WOODLAND AND MOORLAND, BURNFOOT MOOR OPENCAST SITE, MUIRKIRK

#### APPLICATION BY UK COAL LIMITED

#### Report by Head of Planning and Building Control

## 1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because the proposed development relates to the extension of an existing mineral extraction site which is considered to be in accordance with the policies in the Opencast Coal Subject Plan.

## 2. APPLICATION DETAILS

2.1 **Site Description:** The proposed development site lies immediately north of Muirkirk village, extending from north of the Smallburn residential estate in the western part of Muirkirk towards Middlefield Drive and Muirkirk cemetery in the north-eastern part of the village. The site comprises lands associated with the existing Burnfoot Moor opencast coal site and land associated with the former steading of Bankend and the former Muirend Colliery. The site lies to the north of the A70 Cumnock -Muirkirk road and to the west of the 8743 Muirkirk -Strathaven road.

2.2 The land to the north of the existing operational site comprises the Burnfoot Moor Plantation, a commercial coniferous forest. Further areas of coniferous plantation lie between the southern part of the application site and the residential area at Smallburn. The north-eastern part of the site is separated from Muirkirk cemetery and residential areas at Middlefield Drive and Wellwood Avenue by rough grassland and a small coniferous tree belt.

2.3 The current Burnfoot Moor operational site extends to 87.7 hectares (216.6 acres) comprising 68 hectares relating to the original Burnfoot Moor site and 19.7 hectares relating to the current Bankend extension area. The application under consideration promotes a small extension to the existing operational site of approximately 2.7 hectares in area that lies outwith the current operational boundary. This small area lies between the existing void area and the former access road into the Burnfoot Moor site. This area was previously afforested but was clear felled as part of the preparatory works for opencast operations in the Bankend extension area.

2.4 Planning permission for the Bankend extension to the Burnfoot Moor opencast site was granted on 12 June 2001, with operations commencing on 02 July 2001. Although the 2.7 hectares of land that is the subject of this application was not part of the development site at that time, it was included in the wider area covered by the restoration scheme for the extended opencast site.

2.5 **Proposed Development:** Full planning permission is sought for an extension to the existing operational opencast site by an area extending to 2.7 hectares to allow the winning and working of seams of coal that outcrop within this relatively small extension area.

2.6 The planning consent for the Bankend extension permitted the extraction of 750,000 tonnes of coal from the site over a period of 42 months. However, following the grant of planning consent, the applicant UK Coal (formerly RJB Mining) instigated a tendering process to select a competent contractor for the extraction operations. During this tendering process, potential contractors expressed concerns over the severe geological conditions that prevailed within the Bankend extension area together with a general inability to extract the consented tonnage without compromising site safety.

2.7 In Summer 2001, UK Coal appointed Crouch Mining as the site contractor to work a reduced scheme to extract some 450,000 tonnes of coal from the site, this to be extracted over a shorter timescale. Excavation operations will not now involve the winning and working of coals within the deeper seams. However, since extraction operations commenced on site, the applicant states that geological conditions within the Bankend extension area are more complex than predicted by them and Crouch Mining. The extent of minor geological faulting in the north-eastern corner of the site is so severe that the coal outcrops to be worked within the existing site boundary are in fact outcropping beyond the boundary.

2.8 The applicant further states that had this geological arrangement been known at the time of making the Bankend extension application, then this area would have been included in the application site. This 2.7 hectares area contains approximately 30,000 tonnes of coal. Furthermore, given that the strata is more vertical than expected, coal seams expected to be won at a depth of between 30 to 60 metres would be unobtainable without first removing the strata immediately above within this area, as the risk of slope failure would be too great.

2.9 The working of this extension area would be undertaken in accordance with the current approved method of working for the existing site operations. There will be no change to the current hours of operation, production levels or traffic movements. The operations within the proposed extension area will be undertaken within the consented timescale of the Bankend extension.

2.10 In terms of potential impacts, it is anticipated that noise levels measured at the monitoring points adjacent to receptors for excavation in the proposed extension area will be lower than those previously predicted and within the noise limits set by condition on the Bankend extension planning consent. Although blasting operations will take place within the proposed extension area, the area lies at greater distance from residential areas than the current site operations and the impact from blasting operations is therefore likely to be at a lower level.

2.11 With regard to the restoration of the proposed extension area, it is already included as part of the approved restoration plan for the Bankend extension area, where the restoration proposals covers a wider area beyond the limits of the application site. Consequently, the restoration proposals will be unchanged.

### **3. CONSULTATIONS AND ISSUES RAISED**

3.1 East Ayrshire Council Roads and Transportation Division has indicated that there are no objections to the proposed development. Since the original application for the site, the proposed volume of coal to be removed is less than originally expected. As this proposal is still within the volumes anticipated under application 99/0791/FL, under which road improvements were agreed and carried out, the proposal is acceptable with no additional conditions.

***Noted.***

3.2 Muirkirk Community Council has no objections to the proposed development.

***Noted.***

3.4 The Coal Authority, British Telecom, British Gas Transco and Scottish Power have not yet responded to the consultation letters.

***Noted.***

3.5 West of Scotland Archaeology Service has not yet responded to the consultation letter.

***Noted.***

3.6 West of Scotland Water Authority, for its water and sewerage functions, has no adverse comments to make on the proposed development.

***Noted.***

3.7 The Scottish Wildlife Trust has not yet responded to the consultation letter.

***Noted.***

3.8 The Scottish Environment Protection Agency states that there will be no objections in principle to the proposed development provided that the drainage arrangements and methods of minimising the risk to the environment are to SEPA's satisfaction. The following points should be adhered to:

- (i) The water treatment areas should be located to receive an contaminated water from the excavation, haul/access roads, overburden/soil tips, plant areas and the coal preparation site. All this drainage requires treatment before being discharged to a watercourse. Ground water from the dewatering of the site may need treatment to reduce iron concentration and flow balancing to cope with expected storm conditions appears to have been addressed by means of utilising the site void.
- (ii) Clean water from around the site should be intercepted and diverted away from the working area. In order to prevent pollution from these ditches it is essential that they be properly designed taking account of the expected flows/ water velocity and constructed incorporating suitable ditch profiles. Freshly cut ditches on steep ground will require some protection to prevent erosion and pollution from mineral solids.
- (iii) All foul drainage from offices, canteens etc., will require treatment prior to discharge to a watercourse and SEPA's consent will be required for the discharge of sewage effluent to a watercourse.
- (iv) All oil storage tanks/drums should be stored within a properly bunded compound capable of holding 110% of the contents of the largest tank. Delivery and outlet points should also be contained within the bunded compound. All valves and fillers should be padlocked when not in use. Waste oil from plant maintenance should be collected and disposed of safely.

***Conditions are currently attached to the existing consent granted for the Bankend extension site to meet the requirements of SEPA. Should planning consent be granted for the proposed extension area, the operations to be undertaken will be controlled through conditions imposed on that consent.***

3.9 East Ayrshire Council's Environmental Health Division states that it has no objections to the proposed development.

***Noted.***

3.10 The Royal Society for the Protection of Birds understands that an extension of 2.7 hectares is requested and that this is currently a mixture of modified bog and commercial plantation. On the basis of this information the proposed extension area does not seem to be of significance for wildlife.

***Noted.***

Should the Council be minded to grant planning permission, RSPB requests that this be made conditional on reaching agreement with RSPB on methods for soil stripping, storage and restoration. This is to facilitate rapid re-establishment of existing plant cover to benefit wildlife. RSPB would also be grateful if you could convey to the developer that a written progress report on the current mining and restoration work would be appreciated, highlighting the measures taken to date to reduce the project's impacts on wildlife.

***Obligations within the existing Section 75 Agreement for the Burnfoot Moor site promote the establishment of a Technical Working Group to monitor restoration and mitigation of the development area. This will assist in addressing the issues raised by RSPB. The applicant has been advised of these comments by RSPB.***

3.11 Scottish Natural Heritage states that there are natural heritage interests of some importance in the location that could be affected by development, but this proposal is not considered to be threatening to those interests. SNH therefore has no objection to the proposal as submitted but would comment as follows:

The application site is noted to fall within 1.5 kilometres of the Muirkirk and North Lowther Uplands potential Special Protection Area (pSPA). Proposals close to a pSPA require, if a significant effect is likely, an appropriate assessment as to their impacts on the pSPA's qualifying interests. In this case, SNH considers that it is likely that no qualifying features will be affected significantly either directly or indirectly and an appropriate assessment is therefore not required.

***Noted.***

SNH, in relation to ecological impacts, notes that this area was identified in the previous Environmental Impact Statement as a partially failed conifer plantation over a shallow to moderate depth of peat, and that this area has now been cleared of trees leaving open degraded bog. Given the history of management of this area, its ecological value is likely to be significantly diminished. Nonetheless, it is important that efforts are made to restore this area to habitat of near equivalent value, and we note that this is already proposed.

***Noted.***

The EIS recorded no notable bird species in this area other than an incidental sighting of a black grouse. As this area has now been cleared of its patchy tree cover, it is likely to be of less value to black grouse in any case. In order to mitigate the decline of black grouse, the report 'Burnfoot Moor opencast Coal Site: Black Grouse Monitoring 1994-2000' recommends modifications to

the proposed restoration plan in the area currently proposed for blanket replanting with commercial conifers. Specifically, the report recommends replanting this area with a sparse cover of mixed trees amongst restored wet heath vegetation. Such a revised scheme of restoration would better compliment the measures already proposed to the east of the site and would serve to offset the additional impacts of the current proposal. SNH would be supportive of any such modification to the scheme of restoration and would be happy to discuss the matter further with the applicant and the Council.

***Obligations within the existing Section 75 Agreement for the Burnfoot Moor site promote the establishment of a Technical Working Group to monitor restoration and mitigation of the development area. This will assist in addressing the issues raised by SNH.***

#### **4. REPRESENTATIONS**

4.1 No representations have been received.

#### **5. ASSESSMENT AGAINST THE DEVELOPMENT PLAN**

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan (1999), the Adopted Muirkirk Local Plan (1985). The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 Notwithstanding the age of the Adopted Local Plans, the proposed development requires to be considered principally against policy 4.10.8.K (ii) which states that there shall be a presumption in favour of protecting good quality/ locally important agricultural land, Listed Wildlife Sites and water catchment areas, SSSI's and historical artefacts.

***The proposed development would not conflict with the provisions of the stated policy.***

5.3 The development requires also to be assessed against the approved Ayrshire Joint Structure Plan and in particular Policy E14 which states that development opportunities for opencast coal working shall be directed to Preferred Areas of Search.

***The proposed extension site does not lie within a Preferred Area of Search. However, under the provisions of Policy E14B, outwith the Preferred Areas of Search, opencast coal working shall not conform to the structure plan except where there is clearly demonstrated environmental benefit achieved through the***

**removal of existing areas of dereliction and there is overall benefit for communities affected, including local employment. In these circumstances, proposals for small-scale, short-term extraction shall be supported.**

**The original Bankend extension development will result in the removal of small areas of derelict land associated with the former Muirend Mine and opencast workings together with the improvement of degraded land in the restoration of the site. The current application will extend the operational site by 2.7 hectares and will also result in the improvement of the previously afforested area, particularly in the wider restoration scheme already approved for the site. The proposals are still short term and small scale and will result in both environmental and community benefits. In this respect it is considered that the proposal is consistent with structure plan policy.**

## **6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS**

6.1 The principal material considerations relevant to the determination of the application are the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) 2001, NPPG 16 -'Opencast Coal and Related Minerals', appropriate Planning Advice Notes, consultation responses and relevant planning history .

### East Ayrshire Opencast Coal Subject Plan

6.2 The Adopted Local Plan covering the development site is considerably out of date and therefore it is considered appropriate that greater weight should be attached to more recent expressions of policy. The Council has agreed that the East Ayrshire Council Opencast Coal Subject Plan (Finalised Version with Modifications) 2001, (EAOCSPP), should be considered as a prime material consideration. The application now requires to be assessed against relevant pertinent policies promoted within this modified plan. Note that in the following paragraphs some of the policies are summarised.

(i) Policy MIN1: All future opencast coal developments will be directed towards and limited to the Potential Coal Extraction Areas as identified in the Subject Plan and the Council will be supportive of such developments in these areas, subject to the development proposals being in compliance with all other appropriate subject plan policies.

**The application site does not fall within the Potential Coal Extraction Areas as identified within the Subject Plan. Unless the proposed development can conform to the provisions of Policy MIN2, then the proposals will be contrary to the provisions of Policy MIN1.**

(ii) Policy MIN2: The Council will not generally be supportive of any new opencast coal developments outwith the Potential Coal Extraction Areas with the exception of small scale, short term extraction proposals which meet the following criteria:

(a) there is clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;

***The original Bankend extension development will result in the removal of small areas of derelict land associated with the former Muirend Mine and opencast workings together with the improvement of degraded land in the restoration of the site. The current application will extend the operational site by 2.7 hectares and will also result in the improvement of the previously afforested area, particularly in the wider restoration scheme already approved for the site. The proposals are still short term and small scale and will result in both environmental and community benefits. In this respect it is considered that the proposal is consistent with Subject Plan policy.***

(b) there is an overall benefit for communities affected including local employment; and

***The recovery of coals within the proposed extension area will help to maintain the existing jobs associated with the Bankend extension and will provide significant socio-economic benefits, both directly and indirectly, to the local area. The site has been subject to previous deep mining and opencast development and the proposals will result in small areas of dereliction being removed. In addition, the extension area is considered to partly consist of degraded land as a result of the previous mining history and afforestation, and restoration proposals will result in net environmental and landscape character improvement.***

(c) there are no conflicts with any other Subject Plan Policies.

***'Small scale' proposals relate to proposals of less than 25ha of total site area. In this respect, the original site area of the Bankend extension is 19.7 hectares. With the addition of a further 2.7 hectares the overall extension area will still be less than 25 hectares.***

***'Short term' proposals relate to proposals with a total extraction and restoration period of less than 2 years'. As indicated in this report, the Bankend extension scheme will now result in a reduced volume of coal being extracted from the site and in this regard, coaling operations will be completed within a shorter timescale than originally envisaged. The small extension***

***.proposed will not result in an extension to the consented timescale for the site.***

***The implementation of the proposed development will result in both environmental and community benefits. In this respect it is considered that the proposals are consistent with subject plan policy.***

(iii) Policy MIN3: Outwith the Potential Coal Extraction Areas, the Council will assess any extension to an existing opencast site on its own merits and against the following criteria:

- (a) that the proposed extraction operations are carried out as a sequential phase of development and not independently or in isolation from the extraction programme of the original approved site;

***The proposed development will be carried out as a sequential phase of development following on from the existing consented area of the original site.***

- (b) that the extended operations utilise fully the facilities and site infrastructure serving the original opencast site; and

***The proposed development will result in the use of existing Burnfoot Moor site facilities.***

- (c) that the scale of operations, rate of extraction and number of vehicle movements generated by the extended site are commensurate with those as existing on the original site.

***The proposed small extension to the operational site will not result in any changes to the scale of operations, the rate of extraction or vehicle movements to and from the site.***

The Council will only be supportive of such developments where, additionally:-

- (d) there is a clearly demonstrated environmental benefit to be achieved through the removal of existing areas of dereliction;

***Comments as per Policy MIN2(a) above.***

- (e) there is an overall benefit for communities affected, including local employment; and

***Comments as per Policy MIN2(b) above.***

- (f) there are no conflicts with any other Subject Plan Policies.

**Comments as per Policy MIN2(c) above.**

- (g) Any extension to an existing opencast operation which would perpetuate any existing disturbance to a local community for a period substantially in excess of 5 years will not be considered acceptable, unless it can be clearly demonstrated that there are significant local community and local environmental benefits to be secured by the development.

***The proposed small extension will not result in any extension to the approved timescale of operations for the Burnfoot Moor site. As indicated above, the site operations are expected to be completed at an earlier stage due to the reduction in coal recovery from the consented site.***

- (iv) Policy MIN4: Any proposed opencast coal developments for new, small scale, short term working as detailed in Policy MIN2 above and for extensions to existing workings as detailed in Policy MIN3 which relate to areas located outwith the Potential Coal Extraction Areas will be assessed against the following criteria:-

- (a) the impact on agricultural land quality, the landscape character and visual amenity of the area, and the natural and built environment;

***No objections have been received from statutory or non-statutory consultees and the proposed extension will have no greater or additional impact in respect of the stated criteria.***

- (b) the impact on the area of noise, dust and the contamination of ground and surface water and air quality;

***With the mitigation measures previously proposed within the Environmental Statement for the Bankend extension, the current planning conditions and environmental monitoring systems relating to the current operational site, it is considered that the proposed development can operate within environmentally acceptable standards relating to noise, dust, vibration, air quality and water quality.***

- (c) the impact of the development on local communities, groups of houses and individual dwellings;

***The proposed extension area is further removed from the community of Muirkirk and does not encroach any closer to residential properties. It is considered that there will be no additional or greater adverse impacts associated with the proposed development.***

(d) the extent of any directly related community benefit to be derived from the development such as the enhancement and creation of landscapes and habitats, and the removal of dereliction;

***It is considered that through the positive restoration and aftercare proposals for the overall site, there will be overall significant improvement to the landscape character and visual amenity of the area, extending beyond the application site itself. With the permanent removal of a substantial area of coniferous plantation, the proposed restoration of the site will promote greater opportunities for wildlife and habitat creation.***

(e) the opportunities to maximise transportation by rail;

***The nearest available railhead is the Killoch Disposal Point to the west of Ochiltree. Given the scale and short term nature of the proposed extension operations, the provision of a dedicated railhead facility is not considered feasible or appropriate. This will result in coal traffic passing through Lugar, Cumnock and Ochiltree.***

(f) any cumulative impact of the proposal in association with other existing or proposed opencast developments in the area;

***It is considered that the proposed development, being undertaken within the approved timescale for the Bankend extension, will not result in any adverse cumulative impacts.***

(g) any impact on other inward investment opportunities in the area;

***It is considered that the proposed development will not have any significant impact on inward investment opportunities in the Muirkirk area.***

(h) the period of extraction.

***The small extension proposed will not result in any extension to the consented timescale for the site.***

(v) Policy MIN20: Haulage of opencast coal on the public road system to be along clearly defined haulage routes agreed with the Council. With the exception of the 'A' Class Roads throughout East Ayrshire, opencast operators will be required, at their own expense, to bring all roads used by their haulage vehicles up to an acceptable standard for haulage purposes, prior to the use of the route for dispatch purposes. Requirement for operators to pay for any necessary upgrading and maintenance of routes used by opencast traffic.

***Road infrastructure improvements have already been implemented in respect of the original Bankend extension***

...

***application. The Roads Division has no objections to the proposed development.***

(vi) Policy MIN21 : Expectation for potential opencast developers and their approved sub-contractors to enter into a Section 75 agreement with the Council:-

(a) to ensure the highest possible operational standards for the transportation of extracted minerals;

(b) to ensure best operational practice regarding road safety and operational matters;

(c) to agree, regulate and monitor the routes taken by coal haulage vehicles, the arrival of coal haulage vehicles, the dispatch of coal from the site and the numbers of haulage vehicles using the agreed haulage routes;

(d) to audit and record operational details of the transportation of coal on a regular basis; and

(e) to provide the Council with monitoring information regarding transportation and haulage of materials, breaches of protocol etc.

The Council is currently formulating with the co-operation of the opencast operators, a 'Transportation of Coal by Road Protocol' addressing the above issues to which existing and potential opencast operators will be invited to subscribe.

***The existing Burnfoot Moor opencast site is subject to a Section 75 Agreement encompassing the above matters.***

(vii) Policy MIN 24: In order to ensure that opencast coal operations do not cause unacceptable disturbance and nuisance to residents of local communities, the Council may consider opencast developments unacceptable where:-

(a) a development has a working face or operational areas relating to the storage, processing or dispatch of coal which encroach within 500 metres of the community concerned, or

(b) storage mounds, landscaping bunds or settlement lagoons are located within 100 metres of the community concerned, or

(c) the proposal involves a substantial area for extraction over an extended extraction period in excess of ten years, or

(d) the proposal is likely to be subject to repeated extensions, perpetuating disturbance to local communities for a period substantially longer than five years.

***The proposed extension to the Burnfoot Moor opencast site will not result in any conflict with the provisions of Policy MIN24.***

(xiii) Policy MIN26: Any proposal to undertake any extraction operations or to locate operational areas relating to the storage, processing or dispatch of coal within 500 metres of any sensitive establishment, local community, group of dwellings or individual dwellinghouses not in the ownership of the developer will only be entertained by the Council where the development can be fully justified by the developer in environmental terms and where certain criteria are met:

***The proposed extension to the Burnfoot Moor opencast site will not result in any conflict with the provisions of Policy MIN26.***

(ix) Policy MIN27: Protection of areas of nature conservation interest from adverse effects of opencasting.

***There are no areas of statutory or non-statutory nature conservation interest within the proposed extension site. There are no objections from RSPB or SNH. The proposed operations will therefore not conflict with the provisions of Policy MIN27.***

(x) Policy MIN28: Protection of built heritage resources and the natural environment from adverse opencast proposals.

***The proposals would not conflict with policy.***

(xi) Policy MIN33: The Council will, if mindful to grant planning permission for an opencast coal development and if considered appropriate, request an applicant to enter into an agreement with the Council under Section 75 of the Town and Country Planning (Scotland) Act 1997 in order to regulate, by agreement, such matters as cannot adequately be regulated by the imposition of planning conditions.

(xii) Policies MIN34 and MIN35: Mineral Trust Fund contributions encouraged in respect of opencast operations to be used for community improvements. Submission of appropriate information on coal extracted from site.

(xiii) Policies MIN36 and MIN37: Requirement for operators to lodge restoration bonds and requirement to fund aftercare schemes.

***The existing Burnfoot Moor opencast site is subject to a Section 75 Agreement encompassing the above matters.***

***It is therefore considered that the proposed development is consistent with the relevant EAOCSP policies pertinent to this application***

## National Planning Policy Guidelines

6.3 Recent guidance on opencast coal extraction has been given in National Planning Policy Guideline 16: Opencast Coal and Related Minerals. Consistent with putting concern for the environment at the heart of policy, the Government seeks to apply a sustainable approach in determining where opencast coaling may take place.

6.4 Many of the provisions of NPPG 16 are addressed within the EAOCSP with regard to the proximity to local communities, repeated extensions, cumulative impact, natural and built heritage and the preference for rail transport. The proposal is thus considered to be consistent with NPPG 16.

## Planning Advice Notes

6.5 The existing operations at Burnfoot Moor have also been designed to comply with the advice contained within Planning Advice Note 50: Controlling the Environmental Effects of Surface Mineral Workings, Annexes A, B, C and D. In this regard the working of the proposed small extension area will require to be undertaken in line with the existing operational controls imposed on the site.

## Planning History

6.6 CD/94/300/MIN: Full planning consent was granted on for the extraction of coal by opencast method at Burnfoot Moor on 17 April 1996. A subsequent application for an amendment to the haulage route was approved by the Development Services Committee on 23 September 1998 (Ref. No. 97/0749/FL).

6.7 99/0791/FL: Planning permission for the Bankend extension to the Burnfoot Moor opencast site was granted on 12 June 2001, with operations commencing on 02 July 2001.

## Consultation Replies

6.8 The consultation replies indicate that approval of the application would be appropriate.

## **7. FINANCIAL AND LEGAL IMPLICATIONS**

7.1 There are no financial implications for the Council in the determination of this application. Should the Committee agree to approve the application, this would necessitate an amendment to the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 for the Burnfoot Moor site to include the proposed small extension area within the terms of this Agreement.

## **8. CONCLUSIONS**

8.1 As indicated in Section 5 of the report, the proposed development is considered to be in accordance with the Development Plans. Therefore, given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, the application should be approved unless material considerations indicate otherwise. As indicated in Section 6 of the report, there are material considerations relevant to this application, but in this regard, the proposed development is also considered to be consistent with the policy provisions of the East Ayrshire Opencast Coal Subject Plan (Finalised Version with Modifications) which is a prime material consideration in the determination of this application.

8.2 The proposed development represents a modest extension to the existing approved scheme for the Bankend extension development. The proposal to extend the workings will not result in the proposed operations encroaching any nearer to residential properties than the existing operations. The scale of operations, rate of extraction and number of vehicle movements generated by the extended site operations will be commensurate with current site operations. The existing Burnfoot Moor opencast site has a current consent for a three and a half year period and the proposed operations will be undertaken within this timescale.

8.3 No objections have been received with respect to the proposed development either from consultees or third parties.

8.4 Should the Committee agree to grant planning permission, any consent should be withheld until the existing Section 75 Agreement under the Town and Country Planning (Scotland) Act 1997 has been duly amended to include the additional extension area within site plan annexed to this Agreement.

## **9. RECOMMENDATION**

**9.1 It is recommended that the application be approved subject to the conditions on the attached sheets and that the issue of the decision notice be withheld until the Solicitor to the Council has satisfactorily amended the existing agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 with the applicant, in respect of the matter described in Section 8.4 of this report.**

## **CONTRARY DECISION NOTE**

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, the application would not require to be referred to the Development Services Committee as it would not be a significant departure in terms of principle from the East Ayrshire Opencast Coal Subject Plan.

Alan Neish  
Head of Planning and Building Control

20 February 2002  
HM/HM  
FV/DVM

### **LIST OF BACKGROUND PAPERS**

- 1 .Application Form and Plans.
2. Statutory Notices and Certificates.
3. Consultation Responses.
4. East Ayrshire Local Plan (finalised)
5. East Ayrshire Opencast Subject Plan (Finalised Version with Modifications)
6. Ayrshire Joint Structure Plan
7. Adopted Muirkirk Local Plan
8. NPPG 16 : Opencast Coal and Related Minerals
9. PAN50 : Controlling Environmental Effects of Surface Mineral Workings (Annexes A, B, C and D)
10. Previous applications CD/94/0300/MIN. 97/0749/FL and 99/0791/FL

Any person wishing to inspect the background papers listed above should contact Mr H Melvin on 01563 555481.

**Implementation Officer: Dave Morris**

Form TP24A

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application no: 02/0039/FL

Location Bumfoot Moor Extension,  
Muirkirk

Nature of Proposal: Proposed extension to existing site for the winning and working of coal by surface mining methods and restoration of those areas to a mixture of woodland and moorland

Name and Address of Applicant: UK Coal Mining Limited  
Harworth Park  
Blyth Road  
Harworth  
DONCASTER DN11 8DB

Name and Address of Agent

DPO's Ref: [Hugh Melvin  
PPO's Ref; [

1. The proposed development shall be carried out in complete accordance with the application form and plans received by the Planning Authority on 29 January 2002 (Drawing. No. 141/032).

REASON: To ensure that the development is carried out in accordance with the approved details.

2. The proposed development hereby approved shall otherwise be undertaken in accordance with the conditions pertaining to planning consent 99/0791/FL dated 12 June 2001.

REASON: To retain effective planning control over the proposed development in accordance with current consent relating to the Bumfoot Moor Extension opencast site.

**DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT  
THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S  
PLANNING OFFICE IN LUGAR. FOR INFORMATION ON  
VIEWING PLEASE CONTACT (01563) 555320.**

**AGENDA**