

## **Climate Change, Environment and Infrastructure Committee – Evidence Session Ffos y Fran**

The Merthyr Tydfil County Borough Council (MTCBC) officers that dealt with the original Planning applications, legal and financial agreements for the Ffos y Fran scheme have long left the authority, and as such the background knowledge, context and intricacies of the development is limited to the fairly recently gathered information gleaned by those officers currently negotiating matters on behalf of the authority. For this reason, our ability to contribute evidence is limited.

You will appreciate that minerals planning can be a complex matter requiring specialist experience and knowledge. In common with most other LPA's in Wales we do not have specialist Minerals Planning Officers and instead rely on an SLA with Carmarthenshire County Council to deliver minerals work including planning applications. As advised in correspondence, you may wish to invite evidence from them given their breadth of knowledge and experience on the matters raised.

The current negotiations in relation to restoration of the Ffos y Fran site have been led by the Council's solicitor and Development Control Group Leader, who offer the following comments in response to your invitation to submit evidence in response to the 3 points raised:-

- The financial and practical arrangements in place for the restoration of the Ffos y Fran opencast site;

A restoration strategy formed part of the Planning permission for the Ffos y Fran development that was granted by the National Assembly for Wales. In terms of practical arrangements, MTCBC have for some time been in discussion with the site operators in relation to restoration of part of the site in accordance with the originally approved strategy as well as developing a revised strategy for the remainder of the site. Restoration of the land is a condition of the Planning Permission.

In terms of financial arrangements, £15,000,000 to be used for restoration of the site currently sits in an escrow account.

- How restoration of opencast sites can be secured, and contingency planning in the event of insufficient funds being available to restore sites; and

MTCBC is aware of the best practise guide on 'restoration Liability Assessments' for surface coal mines prepared in 2016. Overall, the principles set out in the document, which seek to reduce the opportunity for the site operator to abandon the site without carrying out the final restoration in accordance with the approved plans is supported. It clearly necessitates the need for appropriate expertise and where appropriate independent expert assessors. It also requires co-operation from the site operator who would bear the costs of any agreement to be secured.

Unfortunately, this advice was not available when the planning application for Ffos Y Fran was considered in 2005, Planning permission was granted by the National Assembly for Wales and these principles do not appear to have been secured.

- Discussion of the findings and recommendations from the Welsh Government report on *Research into the failure to restore opencast coal sites in south Wales (April 2014)* and whether these are still applicable.

MTCBC is aware of the research paper on the 'failure to restore opencast coal sites in south Wales'. Of particular interest is Section 5.3 of the report, which sets out the options for unrestored sites or sites at risk. It also highlights some of the challenges that local authorities may face to resolve such matters, which certainly reflects the experiences of MTCBC in dealing with the closure of Ffos Y Fran opencast mine.

Section 5.3.1 acknowledges that sites may remain abandoned or un-restored as a result of the site operator delaying or refusing to meet the restoration conditions. Where the bond is insufficient to secured the full restoration, the LPA may have legal redress under the planning permission and any Section 106 agreement, but that process in itself can incur significant costs. This can arise from the legal counsel, the technical input needed to meet the restoration of the site in accordance with the planning permission, as well as the on-going monitor of the site.

If it is anticipated that the site operator might fail to restore the site, with an inadequate bond and limited success of enforcement, the report notes that there are few remedies to enable the planning conditions to be met. There are however some mitigation measures that can be examined, which may include:

- The submission of a revised planning application to extend the life of the mine, where additional contributions towards the restoration fund can be made. This was explored as part of a planning application to extend the life of Ffos y Fran for an additional 3 years. However, the application was refused as it ran contrary to national planning policy.
- A new application for a revised after-use of the site to generate enhanced residual land values. In the case of Ffos Y Fran, the majority of the site is to return to common land. To date no alternative scheme has been presented to the local planning authority for consideration.
- Major reconfiguration of the form of restoration for the site. A dominant cost component for the restoration works relates to the bulk earthmoving needed to replace the excavated overburden back into the void. Such costs could be reduced by partially infilling the void, reshaping the overburdens and could include part of the void being retained as a water feature. This is currently being explored at the Ffos Y Fran site, where the site operator is currently preparing the submission of a future planning application to vary the restoration strategy, which would likely involve the retention of some of the overburdens and a water body in the void.