

Communities and Local Government Committee: Inquiry into the operation of the National Planning Policy Framework

1) This is a short submission from the Loose Anti Opencast Network (LAON), which brings together some 28 community campaigns from across the UK, 16 of which are in England, who oppose opencast coal planning applications and operations because of their environmental and social impact. Because planning issues (as they relate to opencast) are devolved matters in both Scotland and Wales this note relates to the situation in England and to its NPPF.

We appreciate that the inquiry appears principally to be concerned with such matters as housing delivery and the achievement of planning application targets. However in his website video, the Chair of the Committee referred to two related energy sources (fracking and wind energy) where the issues arising are broadly similar to those which concern us about opencast coal, and asked 'whether the planning framework is delivering what the community wants'. Because we do not believe that the NPPF is adequate to deliver what we believe our communities want, we therefore wish to draw some matters to the committee's attention.

2) Previously the relevant planning guidance (Minerals Planning Guidance 3: Coal mining and colliery spoil disposal *paragraph 8*) contained a 'presumption against' opencast development unless certain tests were met. We believe that this was the appropriate starting position from which opencast applications should be considered in view of the adverse environmental and social impacts frequently associated with this type of operation. In NPPF that 'presumption against' is repeated but now in a different formulation (*paragraph 149*): *'Permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or if not, it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning*

permission.'

So this now applies three tests, in sequence: applications should only be approved (i) if they are 'environmentally acceptable'; (ii) if they are not, if they can be made so by conditioning; and then (iii) if they are still not environmentally acceptable, if they provide 'national, local or community benefits which clearly outweigh the likely impacts'.

Our submission is that this paragraph 149 test and 'presumption against' is not being properly applied in practice by local planning authorities because it is too limited in the range of impacts it requires to be considered, and then because LPAs are not applying an up-to-date assessment of 'national benefits' (as well as an unbalanced assessment of local and community benefits)

2.1) The guidance only refers to environmental impacts and not social or health impacts, and is consequently too concise to engage with the full breadth of local impacts. As a particular example the section on 'Proximity of mineral workings to communities' in the accompanying NPPF technical guidance (*paragraphs 20–22*) does not actually establish a quantified minimum distance between the boundary of an opencast site and the neighbouring community. Instead there are three paragraphs of generalised discussion which reach this conclusion: 'In such cases, it may be justified to consider adequate separation distances.' This approach is asymmetric in its application: it will suit applicants, and those with professional or expert knowledge; it emphatically disadvantages communities confronted with application boundaries that in some instances, are within 17 metres of houses, as at the Halton-lea-Gate site, where planning approval was given after the first Public Inquiry Decision for an opencast site, held under the new NPPF rules in August 2012.

(2.2) Opencast applications and determinations are increasingly out of touch with the rapidly changing circumstances concerning the use of coal for the generation of electricity. In the debate on the Lords

Amendments to the Energy Bill on 4/12/13 Michael Fallon, the Energy Minister said this on the floor of the House of Commons

“.....the economic outlook for coal generation is poor.

Our analysis is consistent with that outlook and shows that unabated coal generation will make up just 7% of total generation by 2020 and 3% by 2025, and probably 0% by 2030. There is no evidence at the moment of a large number of operators planning to upgrade their coal plants, but we should not rule out the possibility that one or two might do so.”

2.3) More recently, on the 3/4/14, during Oral Answers to Questions on Energy and Climate Change again in the House of Commons, this exchange occurred:

“ Ian Lavery (Wansbeck) (Lab): Does the Secretary of State agree that security of supply will not be enhanced by the closure of two of the last three deep mines, Kellingley and Thoresby, and open-cast mines? Bearing in mind the fact that the Government have taken £4.5 billion from the mineworkers’ pension scheme, including £700 million this year, surely it is not beyond their imagination to use the miners’ own money to support what is left of the industry.

Mr Davey: We do not see a security of supply problem here, but the Government need to engage with all parties to determine what we can do, and we have been incredibly active in doing so.....”

2.4)The effect of this substantial change in Energy Policy instituted by the Government will result in a drastic reduction in the future demand for opencast coal. LAON argues that this constitutes a new set of circumstances which has come into being since the NPPF was drafted. Firstly that the Government predicts a decline in coal usage for power generation purposes and secondly, that not exploiting domestic coal reserves

is no longer a threat to UK Energy Security. We are therefore suggesting that if the NPPF is reviewed, that this change in the use and importance of Coal in Energy Policy be reflected in Planning Policy.

In addition we would suggest that the NPPF approach – which in any case is mostly not related to the particular circumstances of opencast coal – is insufficiently specific to protect local communities against adverse social and health impacts.

3) Comments on particular paragraphs of main NPPF

3.1) NPPF paragraph 142 ‘Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation.’

Comment: This is not appropriate to the particular case of coal, and is no longer consistent with government policy as set out by the Energy Minister and Secretary of State for Energy and Climate Change as explained above.

3.2) NPPF paragraph 143 ‘LPAs in preparing Local Plans ‘should not identify new sites or extensions to existing sites for peat extraction’

Comment: We submit that a similar statement would now be appropriate in relation to opencast coal.

3.3) NPPF paragraph 143 ‘criteria relating to local plans

Comment: LAON notes that in relation to the above example of the Halton-lea-Gate decision, no reference is made to proximity to communities or minimum distances. By contrast in Wales and Scotland, the official planning guidance now in

operation indicates that, generally speaking, there should be a 500m Buffer or Separation zone between an opencast site and where people live. This issue, the need for a Buffer or Separation zone in England was last debated in Parliament when the Government talked out Andrew Bridgen MP's 'Planning (Opencast Mining Separation Zones) Private Member's Bill on 11/2/2011, prior to the introduction of the NPPF. Despite suggestions made during the debate by The Parliamentary Under-Secretary of State for Communities and Local Government, Andrew Stunell, that Mineral Planning Authorities could, in their local plans, introduce such Buffer Zones, no English MPA to our knowledge has yet done so. We therefore suggest that consideration again be given to introducing such a 500m Buffer Zone as a requirement in the NPPF

3.4) NPPF paragraph 144 determination of planning applications. The criteria here require that 'great weight' should be given to the benefits of the mineral extraction, including to the economy'; and that 'in granting planning permission for mineral development, that there are no **unacceptable** adverse impacts on the natural and historic environment, human health ... etc' *our emphasis*

Comment: The inclusion of those two qualifying words ('great', 'unacceptable') as they apply to opencast coal applications, now provide inappropriate support in favour of the application, given the changes status of indigenous Coal production in the UK's Energy Policy.

3.4.1) "...provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards, through the application of appropriate conditions, where necessary. Bonds or other financial guarantees to underpin planning conditions should only be sought in exceptional circumstances.....;"

Comment: LAON considers this guidance in the NPPF wholly inadequate as far as opencast coal extraction is concerned. We have evidence from both Scotland and Wales about how inadequate and short-sighted this limited guidance on the need for Restoration Bonds is. Without greater protection, England risks experiencing the kind of environmental damage now being witnessed by people in Scotland. In Scotland, two undercapitalised opencast operators went into liquidation last year, leaving at least 32 un-restored surface mine sites, which will, it is estimated, cost the taxpayer over £200m to restore. The £200m bill

that the taxpayer is expected to meet is the net cost of restoring these 32 sites, after just £28m has been recovered from various forms of Restoration Bonds. The Scottish Government has recently carried out a consultation exercise on what action should be taken to ensure that new sites get restored, partly because the Insurance Market for Restoration Bonds has now collapsed. Alarmed at the Scottish recent experience of the environmental devastation that can be caused by opencast mining, the Welsh Government undertook its own inquiry, recently published as 'Research into the failure to restore opencast coal sites in south Wales' makes a conservative estimate that the shortfall for funding site restorations despite the existence of Restoration Bonds, is £182m. In Scotland and Wales, proposals are being made to provide a more centralised method of calculating the appropriate level of any required Restoration Bond and advise local authorities accordin

Meanwhile in England, as this is being written, UK Coal Mining Holdings is undergoing a financial crisis. This is a Company which operates six surface mine sites in England. On one of its sites, Minorca, in Leicestershire, the Company has been allowed a 'period of grace' to forgo making a substantial payment towards its Restoration Bond, of £700,000 by Leicestershire County Council, whilst at the same time the Company is removing between 10,000 and 12,000 tonnes of coal a week, worth c £500,000. To local residents, it seems unbelievable that the Company can operate in a manner that increases the size of the site to be restored at the same time as it fails to cover the risk that there will not be the resources to finance site restoration. Much more scrutiny of the adequacy of Restoration bonds is needed in England. Only by such methods can we avoid the likelihood of a 'Keekle Head Saga', where an un-restored opencast site in Cumbria, with Restoration Bonds was left derelict for years, only for a waste disposal company to offer to restore the site if they could store low radio-active waste there. This generous offer was refused by Cumbria County Council and the Refusal was upheld after a Public Inquiry in 2012. However the site still lies derelict.

4) Recommendations:

The Loose Anti Opencast Network requests the Committee to consider the following changes necessary to make NPPF 'fit for the purpose' as it applies to opencast coal:

- 4.1) That as a new set of circumstances about the use of coal has come into being since the NPPF was drafted. Firstly that the Government predicts a decline in coal usage for power generation purposes and secondly, that not exploiting domestic coal reserves is no longer a threat to UK Energy Security. LAON therefore recommends that if the NPPF is reviewed, that this change in the use and importance of Coal in Energy Policy be reflected in Planning Policy in an amended NPPF. Coal should still be treated separately in the NPPF, but its importance should be downgraded.
- 4.2) On the Issue of Buffer or Separation zones, LAON recommends that consideration again be given to introducing such a 500m Buffer Zone as a requirement in the NPPF, so that communities in England enjoy the same degree of protection as communities do in Scotland and Wales.
- 4.3) On the issue of Restoration Bonds, LAON recommends that an English Review into the adequacy and implementation of Restoration Bonds, similar to the recent Welsh study, be undertaken for England in order to reassure local communities affected by opencast mining that their interests, as far as restoring opencast sites are concerned, are well safeguarded. If this review uncovers any cause for concern, then this should result in a redrafting of NPPF para 144 to reflect these concerns.

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