

Director
Miller Argent (South Wales) Limited
Cwmbargoed DP
Fochriw Road
Merthyr Tydfil
CF48 4AE

Eich cyf . Your ref:

Ein cyf . Our ref: : A-PP152-07-014

Dyddiad . Date.7 February 2005

**TOWN AND COUNTRY PLANNING ACT 1990:SECTION 77
APPLICATION BY MILLER ARGENT (SOUTH WALES) LTD
FOR THE FFOS-Y-FRAN LAND RECLAMATION SCHEME, INCORPORATING
THE EXTRACTION OF COAL BY OPENCAST METHODS, AND BEING THE
FINAL PHASE OF THE EAST MERTHYR RECLAMATION SCHEME**

Summary

The Planning Decision Committee is minded, for the reasons given below, to allow, subject to conditions, the above application subject to the submission of a completed planning obligation under section 106 of the above mentioned Act, to include provisions for a financial guarantee to ensure the restoration of the site in the event of the failure of the developer, the taking on of liabilities associated with waste tips on the site and the establishment of a local liaison committee.

1.Consideration has been given to the report of the Inspector Clive Nield BSc, CEng, MICE, MCIWEM who held a local inquiry into the application by Miller Argent (South Wales) Limited for the Ffos-y-fran land reclamation scheme, incorporating the

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extraction of coal by opencast methods, and being the final phase of the East Merthyr Reclamation scheme.

2. On 1 December 2003 the National Assembly for Wales directed under Section 77 of the Town and Country Planning Act 1990 (the 1990 Act) that the application be referred to it rather than be determined by the local planning authority. On 1 February 2005 the Assembly resolved that a committee, to be known as Planning Decision Committee (2)2005/2 be established, in accordance with Standing Order 17 to discharge the functions of the Assembly under Section 77 of the 1990 Act, in respect of the application by Miller Argent (South Wales) Limited. Accordingly, the Planning Decision Committee has considered the application and has resolved under Standing Order 17.16 to adopt this letter.

3. The Inspector's conclusions are set out at paragraphs 296-356 of his report, a copy of which is enclosed, and those paragraphs are reproduced as an Annex to this letter. The Inspector recommended that the application be approved, subject to planning conditions.

4. Following the submission of the Inspector's report to the Assembly the Assembly's Planning Division sought further information from you and Merthyr Tydfil County Borough Council (the Council) on technical matters of detail in relation to the diversion and improvement of Bogey Road, a suggested condition relating to the provision of a parent company financial guarantee and the legal Agreement between Miller Argent (South Wales) Limited and the Council. These matters are dealt with below.

5. Subject to the comments below the Planning Decision Committee agree with the Inspector's conclusions and accept his recommendation.

6. The Planning Decision Committee agree with the Inspector that the proposal would provide both environmental and economic benefits which would include the restoration of a large area of derelict land in accordance with the development plan at no public expense. They agree with him that there would be the benefit of the provision of about 200 jobs and other local benefits together with the wider benefit of providing suitable coal for Aberthaw Power Station which is important to economic activity in South Wales. With regard to the provision of local benefits referred to by the Inspector the Planning Decision Committee consider that the proposed educational visitor/education centre, and the community benefit fund to be established by the Council, while desirable, cannot be regarded as necessary to make the development acceptable in land use planning terms, and therefore cannot be taken into account as factors weighing in favour of the development. Nevertheless, the Planning Decision Committee consider that the other factors identified by the Inspector are substantial benefits strongly favouring the proposal.

7. The Planning Decision Committee have weighed these benefits against the potential environmental disadvantages of the development. The Planning Decision Committee see no reason to disagree with the Inspector's conclusion that the general effect on the health of the community would not be significant and that, with the imposition of appropriate conditions, the effect on the living conditions of nearby residents from dust, noise and blasting would not be unacceptable. They also accept

his assessment that surface and groundwater resources would be adequately protected. While the Planning Decision Committee accept that the scheme would have a moderate effect on the historic landscape they agree with the Inspector that all features of high archaeological value would be protected. The Planning Decision Committee also agree with the Inspector that in the long term a more attractive landscape would be provided. They also accept that traffic effects would be negligible. The Planning Decision Committee agree with the Inspector that taken as a whole the development would not cause unacceptable harm to nature conservation and that the protection of Great Crested Newts which have been identified on the site should be assured by a condition requiring the necessary granting of a licence under the Habitat Regulations 1994 before any site clearance works take place.

8. The Planning Decision Committee agree with the Inspector that the scheme would be in accordance with the development plan and overall they consider that the substantial benefits associated with the scheme far outweigh the objections.

9. The Wales Spatial Plan was not considered at the inquiry. As regards South East Wales the strategy involves regeneration along the Heads of the Valleys corridor and the strengthening of the valleys by making them desirable places to live, work and visit and the provision of distinctive communities set in an attractive environment. The Planning Decision Committee take the view that evidence presented to the inquiry indicates that the scheme would not be out of accord with the strategy of the Spatial Plan.

10. The Planning Decision Committee have taken the environmental information, as defined for the purposes of the relevant Environmental Assessment Regulations, into consideration in reaching their decision on this application.

11. The Planning Decision Committee have reached their decision taking account of all correspondence received after the inquiry had closed and they are satisfied that the correspondence raised no new evidence or new matter of fact which would materially affect their decision.

12. The Planning Decision Committee have carefully considered the question of the conditions to be attached to a grant of planning permission having regard to the conditions discussed at the inquiry, the comments of the Inspector and the advice contained in Welsh Office Circular 35/95. Subject to the amendments referred to below the Planning Decision Committee agree with the Inspector that the conditions listed in the Annex to his report would provide adequate and necessary controls over working methods aiming at minimising and mitigating impacts on the environment and local amenity and should be imposed.

13. The Planning Decision Committee consider that suggested condition 34 in the Annex to the Inspector's report should be amended to incorporate reference to revised improvements to Bogey Road. The works relating to these improvements described in the planning application differ from those shown in the application under Section 247 of the Town and Country Planning Act 1990 for the stopping -up, diversion and improvement of Bogey Road details of which were submitted to the inquiry. Having considered the responses submitted by you and the Council to the consultation on this matter, referred to at paragraph 4 above, the Planning Decision

Committee have concluded that the revisions are not substantial and would have no additional traffic impact compared with the original works. In consequence they consider that the revised improvement works should be included as part of the scheme for associated highway engineering works to be agreed with the Council under condition 34. The Planning Decision Committee, again having considered the response submitted to consultation referred to in paragraph 4 above, also consider that suggested condition 60 in the Annex to the Inspector's report should be amended to avoid it having a restrictive effect should the development be carried out other than by your company.

14. The Inspector's report noted that your company and the Council have concluded a legal Agreement that makes certain matters legally binding on your company if the scheme is implemented. These are a royalty payment into a Community Fund controlled by the Council, a £15M financial guarantee to ensure the restoration of the site should the company fail, your company to take on all future liability associated with the three waste tips and the establishment a local liaison committee. A joint statement setting out these items was submitted to the inquiry as document A12. As indicated above the Planning Decision Committee do not consider that the provision of a community benefit fund is a matter to be taken into account in determining the application. However they have taken account of the other items identified in Document A12 as benefits favouring the grant of planning permission.

15. Having had regard to the consultation, referred to at paragraph 4 above, the Planning Decision Committee have noted that the legal Agreement concluded between your company and the Council, is a commercial agreement and not one made under Section 106 of the 1990 Act. In the view of the Planning Decision Committee, planning obligations which are to be taken into account in granting planning permission must be secured in accordance with Section 106 of the 1990 Act. In consequence the Planning Decision Committee consider that the grant of planning permission in this case should be subject to the submission of a completed Section 106 obligation which should include the items, referred to in paragraph 14 above, taken into account by the Planning Decision Committee as benefits favouring the grant of planning permission. In the opinion of the Planning Decision Committee it is a matter for the applicant company and the Council to consider whether they wish to secure any additional benefits and the means by which this should be achieved.

FORMAL DECISION

16. Your company is accordingly invited to conclude a planning obligation in respect of the matters referred to in paragraph 15 above and to submit it to the National Assembly Planning Division not later than 3 months from the date of this letter. On receipt of a satisfactorily completed planning obligation, a grant of planning permission implementing the Planning Decision Committee's decision set out at the

beginning of this letter will issue.

17. A copy of this letter has been sent to the Head of Planning Merthyr Tydfil County Borough Council.

Yours faithfully

Carwyn Jones AM
Chair, Planning Decision Committee (2)2005/2

