DETR

Response written by 19/10/98
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THE INSTITUTION OF ENVIRONMENTAL SCIENCES

Response to DETR Consultation on Proposed MPG 5 - Stability in Surface Mineral Workings and Tips.

The need for and the envisaged implementation of this guidance would appear to raise numerous issues, which cast doubt on the appropriateness of it in terms of planning guidance.

The guidance is supposedly intended to complement the proposed new quarry regulations, which propose significant changes to the management of quarries and the definition of tips, a factor which does not seem to be adequately reflected in the draft MPG5 (see Para. 6.). It is also proposed to complement the existing content of PPG14. However, it only seems to cover the matter of instability in Surface Workings and Tips. In reality far more risks exist to future development and use of land, as well as to the public at large, from many square miles of very shallow, abandoned, underground mineworkings and associated disused shafts and adits. Is it proposed that further complementary guidance will be issued to cover these equally relevant matters in the future?

Page 2, Para. 3 It should be clearly recognised and acknowledged that a final slope may well be stable at completion of operations and may remain so in perpetuity providing all other things are equal. Development on top of a slope or other actions by the adjacent land owner/developer may of course remove the status quo and create a failure of the slope. Since this may take place some considerable time after the mining/ tipping activity has ceased is it relevant to consider it as a Minerals Planning Guidance matter.

Page 2, Para. 4 The effective restoration of any surface excavation or tip should, in any event, incorporate steps to ensure long term stability, given the foreseeable circumstances prevailing at the time, and any potential instability which has developed during the course of the development should be dealt with at this stage.

Page 2, Para. 5 seems to imply that the planning guidance is intended to ensure that the **operation** .. of surface mineral workings are not detrimentally affected by instability. This is surely a matter of the safety of the operations from a Health and Safety point of view. The reference to the number of accidents in quarries relating to the stability of slopes, in the context of planning matters, seems inappropriate and about as valid as the number of accidents due to falling bricks in the construction of buildings.

The guidance seems to be placing further planning constraints on the minerals sector, which other sectors will not have to endure. In particular, contrary to other guidance and case law, this guidance seems to be creating a secondary regulatory regime where many of the issues which will be raised are already the subject of primary regulatory control by other agencies, for example the Health and Safety Executive or the Environment Agency. The analogy is the control of pollution aspects of a prescribed process regulated by the Environment Agency. The potential for emissions from the process is not a material planning matter.

It is appropriate that these other agencies deal with these matters since they have the requisite expertise to accurately assess the assumptions and predictions being made by the developer. The draft guidance recognises the lack of suitable expertise in MPA's and LAP's to deal with these often complex geotechnical matters at the application and determination stage. Despite the Verne report in the mid 1970's many MPA's are still lacking in adequate expertise even in the rudiments of mineral extraction science.

Moreover, there are numerous geological, hydrological, geotechnical and other environmental factors which could affect the stability of slopes and/or tips, during or at some time after their construction, regardless of the initial predictions made and quite possibly for external reasons beyond the control of the applicant/developer. These are, of course, factors which will only come to light during the course of the development / operations and crystal ball gazing at the planning stage will not always be able to adequately predict all the likely events.

The matter of the instability of mineral workings affecting adjacent land is of course not only the subject of case law relating to the withdrawal of lateral support but is often the subject of statutory requirements, particularly in respect of statutory undertakings where the Mining Codes have been invoked, when compulsory rights have been acquired under the various enabling Acts. These may well in themselves require a greater degree of natural support for protected features, due to the empirical derivation of the formulae used, than that really required based on the site specific parameter prevailing at the time of mineral extraction.

There is a danger of planning authorities trying to apply additional factors of safety, either due to their own uncertainties or in an attempt to satisfy/support some other criteria, perhaps resulting in unnecessary constraints on the development

The concept at Page 11 Para. 38 of LPA's requiring stability reports on tips adjacent to proposed developments raises the important question of the classification of a tip at any particular moment in time and who is actually responsible for its safety and inspection. It needs to be recognised that local authorities themselves have responsibilities in respect of the stability of certain abandoned /disused mineral waste tips.

Development on backfilled mineral workings is no different than development of any other land affected by instability which may be due to the natural geology or superficial deposits, groundwater movements, the topography or a variety of other matters that can give rise to differential settlement. Consequently this guidance might appear to be an over detailed extension of PPG14 on matters which are really for consideration by the LA's Building Inspector commensurate with any proposed development.

Consideration might be given to extending the new quarry regulations to cover the issue of final slope stability as well as operational matters rather than further burdening the planning process with issues that may not be readily understood by those trying to implement it.

In summary, it is questioned whether adverse environmental impacts of surface mineral working and tips, in terms of their stability either on the amenity in general or the safe development and use of land in particular, are sufficiently prevalent to justify such a prescriptive guidance in light of the other statutory controls that are or will be in place.