



Eich cyf/Your ref
Ein cyf/Our ref

Llyr Gruffydd MS
Chair
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Welsh Parliament
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17 April 2025

Dear Llyr

Thank you for your letter to Huw Irranca-Davies MS, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, on behalf of the Climate Change, Environment and Infrastructure Committee, regarding the application by Merthyr (South Wales) Ltd for a proposed revised restoration scheme for the Ffos y Fran open cast coalmine.

The issues at the site cut across a number of policy areas but the particular matters you raise in your correspondence fall within the planning system so your correspondence has been passed to me for reply. I address each of the questions raised in your correspondence in turn, below.

1. The options that are available to the Welsh Government to intervene in this case to ensure an appropriate level of restoration is delivered.

Responsibility for enforcing compliance with the agreed scheme rests with Merthyr Tydfil County Borough Council, the Local Planning Authority (LPA) in the first instance.

The agreed restoration scheme stipulated a completion date of 6 December 2024. Clearly, the scheme has not yet been implemented in full. The current situation is that the LPA must decide whether or not to use enforcement powers to regularise any breach of planning control. In deciding whether to use those powers, the LPA must conclude whether such action is expedient in the wider public interest.

Where a breach has occurred, a developer will often submit an application in an attempt to regularise the breach. While sometimes this is a delaying tactic, on other occasions an

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

application enables a transparent assessment of the development's merits, allows for public consultation that would not otherwise take place through the enforcement process and permits the imposition of planning conditions if the development is otherwise acceptable. The LPA is in receipt of an application for a revised restoration scheme and is in the process of determining it.

The application for a revised restoration scheme is made under section 73 of the Town and Country Planning Act 1990. Should it be granted, the effect of the consent would be to grant a new full planning permission for the entire scheme.

The options available to the Welsh Ministers for intervention in the case are:

To call in the Section 73 application for their own determination.

A request to call in the planning application is under active consideration and will be responded to in due course. In the meantime, the LPA should continue to process the application. Consideration of the call-in request will be informed by the LPA's work on the case.

To use reserve powers of enforcement to compel the developer to complete the already approved restoration scheme.

The Welsh Ministers have received requests to use their reserve enforcement powers under Section 182 of the 1990 Act. Planning Policy Wales (PPW) sets out the Welsh Government's strategic policies for land use planning in Wales. Paragraph 1.32 of PPW states:

“Development proposals are generally best determined locally by LPAs which know their area, its needs and sensitivities. The Welsh Ministers do not interfere with LPAs’ jurisdiction unless it is necessary to do so.”

Para 1.36 of PPW discusses use of the Welsh Ministers' reserve powers to intervene in matters which are for the LPA to consider in the first instance, and states:

“Such intervention would overturn a planning authority’s judgement on a matter which is, in the first place, its responsibility and may only be justified in exceptional circumstances. The general principle is that such action should be considered only where the original decision is judged to be grossly wrong, so that damage would be done to the wider public interest.”

LPA officers have advised Welsh Government officials that some restoration activities are continuing onsite, and that the LPA has released some funds from the restoration bond escrow account to pay for this activity. I understand the extent of current works is influenced by a number of factors, including environmental and seasonal conditions. Any use of enforcement powers in relation to failure to comply with the agreed restoration scheme, either by the LPA or by the Welsh Ministers, would need to demonstrate a failure by the developer to take appropriate action to implement the scheme beyond what is already taking place. This is a finely balanced decision for the LPA to take in the first instance.

To consider a planning appeal.

It remains open to the LPA to refuse permission for the Section 73 planning application, and to subsequently pursue enforcement action to ensure compliance with the agreed restoration scheme. The developer would be entitled to appeal to the Welsh Ministers in respect of both decisions of the LPA.

2. The steps the Welsh Government is taking to ensure the best possible outcome for local residents.

The LPA has formed a Technical Working Group (TWG) which is attended and supported by Welsh Government planning and coal tip safety officials, as well as Natural Resources Wales, the Health and Safety Executive, the Mining Remediation Authority and other stakeholders. The TWG is working to ensure its members and the developer are able to respond to concerns in relation to the potential for flooding, pollution and the impact of contaminated land, particularly with respect to the water level in the void.

Separately to the TWG, stakeholders with regulatory responsibilities, including the LPA and Welsh Government officials, are sharing information to ensure a joined-up approach is taken to the use of regulatory powers, if required.


3. Whether the Welsh Government has assessed Merthyr (South Wales) Ltd's financial capacity to deliver the restoration that was initially agreed.

Merthyr (South Wales) Ltd filed full accounts up to 31 December 2023 with Companies House, on 14 March 2025. The accounts can be found at <https://find-and-update.company-information.service.gov.uk/company/04261274/filing-history>. These accounts include provision to pay for restoration costs associated with the Ffos y Fran restoration scheme.

Through the accounts, the company director Mr D Lewis has stated the restoration provision is the management's best estimate of the cash flow expected in order to restore the mine in accordance with the planning consent. The Welsh Government does not have powers under company law to investigate or challenge that statement. We are aware, from looking at the accounts that most of the earmarked restoration funds have been loaned to other group companies but note the director's assertion that the balance is recoverable. The Welsh Ministers have not undertaken an assessment of the company's financial capacity beyond considering their published accounts.

The information presented above is a factual summary of the circumstances surrounding the proposed revised restoration scheme, and potential enforcement action. As these matters are under formal consideration by the Welsh Ministers any comments on the merits of the case could be seen as prejudicial to the matter, leaving the subsequent decision vulnerable to judicial review. I hope you will understand that as a result, I have avoided commenting on the merits of the issue.

Yours sincerely,



Rebecca Evans AS/MS

Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio