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Playing for time: planning and the challenge of managing ‘end-of-life’ minerals extraction in a climate emergency

Neil Harris

Abstract: Planning is an activity conducted in the past and the present that envisions and attempts to manage the future. This article provides a critical analysis of the capacity of a planning system to manage and control land-uses and the impacts of development. The conceptual framing of the article is around time and timing as key themes of recent and ongoing interest in planning. These concepts are examined in the context of a controversial case study of the extraction of coal at an opencast mine located in south Wales in the United Kingdom. The case study relays significant weaknesses in the planning system in acting on the unauthorised extraction of coal even in the context of declarations of climate emergency. The empirical and conceptual dimensions of the paper focus on the importance of time and timing in planning activity, the planning system’s limitations in delivery of what has been imagined in the past, and the significance of third parties in efforts to secure compliance with planning decisions.

Introduction

This paper analyses two elements of the planning system of relevance to this special issue’s themes of aspiration and delivery. The first is closely related to the theme of aspiration and focuses on the potential for consenting systems to envision and shape the future of a development. In other words, at the point of consenting a development public bodies and planners are required to imagine how a development will be managed into the future – and in the case of some forms of development how they will be managed as they approach ‘end-of-life’ (Windemer 2019). The second is closely related to the theme of delivery and how well the planning system manages the implementation of a development, especially in the sense of ensuring that a development that is implemented over a period of time accords with the original plans for the development and any conditions or restrictions on the permission.

These themes are examined in this paper through analysis of a case study of a controversial minerals extraction site. The Ffos-y-Fran opencast coal mine in south Wales in the United Kingdom made news headlines in summer 2023 for the ongoing and unauthorised extraction of coal beyond the life of the planning permission. Minerals extraction raises a series of specific issues in relation to implementation and compliance. These issues include the management of complex sites and activities, significant environmental impacts, and extensive and enduring impacts on local communities. This paper uses the Ffos-y-Fran site as a lens through which to examine important policy and conceptual dimensions of end-of-life of minerals planning permissions. The policy issues are significant in that important policy changes can occur during the life of a minerals extraction site resulting in controversies as the energy needs of the past and present interact with plans and visions for the future. The conceptual issues are important too – especially in terms of past planning actions trying to envisage and manage future deliberations at end-of-life. The Ffos-y-Fran case study highlights other relevant compliance themes including accusations of ‘gaming’ the system, the imbalance of rights and responsibilities, and the seeming impotence of the planning system in acting on unlawful activities, even in cases of significant social and environmental impacts and clear conflict with present policy agendas.

The paper is structured in four key sections. The first section links recent theorising around planning and time to the special issue themes of ‘aspiration and delivery’. The second section outlines the key characteristics of the planning system in Wales for the control of ‘development’ and relays the controversial story of an opencast coal site in south Wales in the United Kingdom where minerals extraction did not cease at the end of the authorised period for the extraction of coal. The story is one that illustrates both limitations in the capacity of the planning system to act on unauthorised development, and more importantly to hold landowners, developers and site operators to the ‘aspirations’ set out at point

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of consenting development. The third section engages in thematic discussion and highlights the wider lessons derived from the case study, as well as linking the case to conceptual issues on time in planning. The final section relays a concise series of conclusions on ‘aspiration and delivery’ through a lens of minerals extraction.

Time and timing in planning

There has in recent years been an increasing interest in the planning literature in time with recognition that “time is a key constitutive dimension of all planning activity” (Laurian, Inch 2019:267; see also Hutter, Weichmann 2022). The themes of aspiration and delivery that cut across this collection of special issue papers are intrinsically time-related, with aspiration expressing hopes and ambitions for the future and delivery being the realisation of a project in its intended or adapted form. Abram and Weszkalnys (2011: 3) highlight the aspiration dimension of planning in recognising that “planning is an inherently *optimistic and future-oriented* activity that takes many different forms” (emphasis added). This literature on planning and time regularly highlights – and indeed emphasises – this future-orientation of planning, especially in the making of plans and in the consenting of development. The conceptualisation of plans and planning as a form of ‘promise’ or compact is especially interesting (Abram, Weszkalnys 2011). Some of this literature is also sensitive to the ‘delivery’ of plans and projects imagined for the future and the disappointments and failures this can result in:

“In defining the modern, it would be uncontroversial to suggest that state planning is an archetypally modern expression of both time and space. The idea of improved futures to be achieved by the rational application of policy and the hygienic distribution of development is emblematic of a modern worldview (see Rabinow 1989), *even if practice may fall short of the high ideals* that rational planning promises.” (Abram 2014: 129, emphasis added).

The conceptual literature on time and planning also makes some important distinctions between different forms of ‘time’ that can be useful in analysing planning narratives and practical cases. Laurian and Inch (2019), for example, emphasise the importance of ‘clock time’ in planning, but also identify the limitations of clock-time in enabling fuller analyses of what planning does. Clock time is often significant in enabling ‘regulatory timeframes’

with the appearance of fixity that allows for specific dates and periods to be set out for managing development into the future. There is also ‘Utopian’ time (Abram, Weszkalnys 2011) which focuses on a future in which problems and tensions are anticipated to be resolved. Planning often depends on this enactment of time, including in very practical ways. Time and timing also have other more regular dimensions of significance in planning activity. For example, Laurian and Inch (2019) relay the sometimes very tactical use of ‘timing’ in planning processes – including when information is made public, when interventions are undertaken, and when certain regulatory tools are used. The speed with which planning decisions are made is regularly a practical concern, as is the impact of delay in plan-making and decision-making, yet even these very practical concerns are capable of more critical evaluation in terms of the impacts and effects of managing time (Raco et al. 2018). These various considerations when taken together infer specific ‘planning timescapes’ that may be shaped by actors in the planning system (Dobson, Parker 2024).

Windemer (2019) highlights important characteristics of these planning timescapes, including planning’s engagement in longer-term timeframes than is typical in other areas of public policy, and the simultaneous working with a multiplicity of different timeframes. Windemer also refers to the particular significance in planning of ‘regulatory timeframes’ that operationalise start and end points for developments. She argues that this leads to a “focus on managing the present while leaving problems to be resolved in the future (Abram, Weszkalnys 2011)”. The case study explored later in this paper ties together these themes of aspiration and delivery, and the related themes of imagined futures and the resolution of issues in the present, examining what happens ‘when the future runs out’ and the complexity and limitations of planning projects can no longer be deferred into the future. The work by Windemer (2019) on the ‘end-of-life’ stage of planning becomes particularly instructive here. Windemer (2019) examines planning and time in relation to renewable energy with a specific address of wind farm development. Windemer also points to the limited extent of planning research that has “assessed the temporal framing of planning regulation, considering what is controlled, over what time period, and what might happen when time runs out” (2019: 1). This article therefore addresses this continuing gap through examining a controversial case study of minerals extraction in

which aspirations for a time-limited extraction site and its future restoration are thrown into disarray at end-of-life stage. The concepts relayed in this section are also revisited and extended in later parts of this article following the analysis of the Ffos-y-Fran case study.

The control of ‘development’ and minerals extraction: distinctive features for managing aspiration and delivery

The statutory planning system in Wales shares many characteristics with the planning systems in other parts of Britain. A concise introduction to some of these essential features is necessary for understanding the account in this paper (see Sheppard et al. 2017; Bowes 2019 and Duxbury 2018 for additional detail). The planning system is focused on the control of ‘development’. The carrying out of ‘development’ requires planning permission. Proposals to carry out development usually require an application to the local planning authority for planning permission. Most planning applications are decided locally yet developments of more than local importance can be ‘called in’ for decision centrally. There is an extensive, multi-scalar framework of planning policies at national and local levels. There is nevertheless considerable discretion exercised by decision-makers resulting in a flexible yet sometimes uncertain planning system.

Planning permission can be refused or granted with planning conditions. Planning conditions set out the parameters of the permission, including further information needed before development can commence, when development must have commenced by, and for certain forms of development any dates by which a permission ends. A planning permission can also be accompanied by a legal agreement to help manage development. The planning system additionally has enforcement or compliance tools for addressing ‘unauthorised development’. Unauthorised development can be development without a necessary permission, or development that does not comply with its planning permission and conditions.

The working of minerals is a distinctive form of ‘development’. Minerals extraction has very significant local environmental impacts – and some types of minerals extraction also have significant global environmental effects, especially the extraction of fossil fuels and their contribution to climate change. Local environmental impacts are sustained too and can mean extended periods where local communities

experience noise, dust, traffic, visual impacts and landscape scarring (Ibarra, de las Heras 2005). The distinctive characteristics and impacts of minerals extraction mean that decisions to give permission for minerals extraction are themselves complex, contentious, and take considerable time (Beynon et al. 2000). These decisions are taken in the context of other important factors that extend beyond localised impacts on communities – with these factors including contributions to the local and national economy, security of energy supply, and national ‘need’ for minerals. The extraction of coal is also increasingly contentious in the face of global warming, climate change, and international and national commitments to limit carbon emissions. Applications for planning permission for the extraction of minerals, and particularly coal, are therefore contentious and bring together opposing interests across different scales. The planning system subsequently becomes an important regulatory arena for the interaction of multiple, complex policy issues operating across scales.

Minerals extraction in contexts like Wales is usually undertaken on an authorised basis, with planning permission secured before commencement of development. The unauthorised extraction of coal is unusual because of the scale of extraction operations and the density of regulation and licencing. Enforcement in relation to minerals extraction therefore usually focuses on compliance with the terms of a planning permission and any planning conditions, for example on hours of operation, and management of environmental impacts during operation. These conditions can be extensive and are an essential component of managing and mitigating the impacts of a site. The most important planning conditions for the purposes of this article are those that define the operational period during which extraction of minerals is authorised, and those that manage the restoration and management of the site following cessation of minerals extraction. This ‘end-of-life’ stage of minerals extraction sites is in focus in the case study below – and the case study is used to highlight a number of shortcomings of the planning system and the wider governance context in dealing with unauthorised extraction of minerals, and securing post-extraction site restoration. The case is an important one in providing an insight into the significant gap that can exist between aspiration and delivery.

Ffos-y-Fran: a case study in planning controversy at ‘end-of-life’ minerals extraction

Ffos-y-Fran is an opencast coal mine or ‘strip mine’ located close to the town of Merthyr Tydfil in the south Wales valleys. The site is part of what Mason and Milbourne (2017: 32) identified as a ‘resurgence’ in enthusiasm for opencast mining in the first decade of the twenty-first century and was until recently the last operational opencast coal mine in Wales (Godden 2023: 19). The south Wales valleys are historically associated with coal and minerals extraction. These industries were nationalised in the period immediately following the Second World War, experienced decline in the later twentieth century resulting in industrial disputes, and privatised in the 1990s (Beynon et al. 2000). The legacy of these industries is an important part of the social and cultural heritage of the south Wales region. This heritage is recognised for its generation of a distinctive social landscape and the significant environmental, social and health impacts that the region has experienced. The extraction of coal in the region continued through the 1990s and until very recently, yet with opencast coal extraction methods typically in place of former deep-mine operations (Welsh Government 2014).

The following analysis of the *Ffos-y-Fran* opencast site – and recent deliberations over its controversial ‘end of life’ stage – is based on collation of various documentary sources. These sources include media coverage of the controversies surrounding the site, as well as planning application and appeal documentation, legal advice provided to environmental action groups and government ministers, as well as other documentary sources in the public domain. The analysis of these documents is important for identifying and examining the timeframes that are ‘textualised’ in planning documents (Abram 2014), as well as for identifying other important factors in the management of development into the future. The *Ffos-y-Fran* site originally secured planning permission in 2005 as a ‘land reclamation’ project designed to resolve the landscape and environmental impacts of earlier periods of coal extraction (Milbourne, Mason 2016: 29). This land reclamation project was described in the planning application as ‘incorporating the extraction of coal by opencast methods’. The 367 hectare site, like many other minerals extraction sites, secured planning permission following a ‘call-in’ inquiry with the decision

being made at national level by the National Assembly for Wales. The National Assembly for Wales decision was subject to legal challenges in the High Court and Court of Appeal, with the outcome of those challenges finally resulting in permission in 2006. These different scales of governance highlight the interrelationship between the local and national levels, and the differing objectives and priorities that come into focus at each scale, particularly in the context of minerals extraction. Planning permission was granted subject to planning conditions including when the extraction of coal was required to cease, and when the site was to be restored. The planning permission was also subject to a legal agreement alongside the planning conditions. Coal extraction proceeded and continued at the site over a period of almost two decades.

Enforcement and compliance

The *Ffos-y-Fran* site has always been contentious to some degree as an opencast mine, yet its story entered a more complex and controversial stage when reports surfaced of the site operators continuing to extract coal after 6 September 2022, the date that planning conditions required coal extraction to cease (BBC 2022). This date was to signal the end of coaling operations on site with all subsequent works being for the restoration of the site in accordance with an approved restoration and aftercare plan. There was initially some uncertainty about whether continuing operations on site formed part of the restoration of the site, and other ‘making safe’ operations, or did instead amount to continuing coal extraction beyond the period authorised in the planning permission. The investigative work of campaigning groups – including Coal Action Network, Friends of the Earth Cymru, and The Good Law Project – has been instrumental in documenting that unauthorised coal extraction had indeed taken place on the site. Legal advice issued to Coal Action Network highlights that Coal Authority data shows substantial extraction of coal in the three months after extraction should have ceased, and coal extraction then continued for almost another year (Coal Action Network 2023a). This highlights a substantial weakness of the planning system in being able to effectively manage unauthorised minerals extraction beyond the life of a planning permission. This is despite the availability of a series of planning enforcement tools to address unauthorised development (Harris 2011). This section of the article documents the strategies and tactics used by the site operator to defer

enforcement action against unauthorised extraction, which ultimately led to the operator being able to extract the remaining coal before any formal action was taken.

The first step in deferring any formal action was the submission by the site operator of an application to vary the existing planning condition (BBC 2022). The operator submitted an application to secure an extension of the period for extraction of coal for a further 18 months, and defer the period for completion of the restoration of the site. This application was submitted days before the existing authorised period for coal extraction was to come to an end. The local planning authority proceeded to consider the application – reaching a formal decision on the application over six months after the application was submitted (Merthyr Tydfil County Borough Council 2023). The application to vary the condition, if approved, would enable the site operator to extract the remaining 240 000 tonnes of coal from the site. The operator in their application advanced several arguments for why planning permission for extended working should be permitted, including making up for lost operations time during the coronavirus pandemic. Additional arguments put forward by the operator were the continued provision of high-quality steam coal for use in steel production in south Wales – in effect, an ‘energy security’ argument buttressed by a ‘sustainability’ argument of securing coal regionally rather than internationally – and to enable a revised site restoration plan to be designed. Considerable pressure to take more decisive action also built up during this period with efforts made by campaigning groups and residents to bring unauthorised coal extraction to an end.

The local planning authority had to consider the application in the context of a landscape of local and national planning policies – a policy landscape that has evolved in important ways since the grant of planning permission in 2005. Important changes include the Welsh Government’s declaration in April 2019 of a ‘climate and nature emergency’, marking a significant change to earlier periods of minerals planning policy when the environmental and economic impacts of coal mining were considered in a ‘balanced’ way (Beynon et al. 2000: 48). Planning policy introduced by the Welsh Government in 2018 was reported as securing ‘an effective ban’ on new coal mining other than in ‘wholly exceptional circumstances’ (BBC 2018; see also Harris 2021 on exceptions). The Welsh Government also in the intervening period legislated its sustainable development duty in The

Well-being of Future Generations Act (2015) which is intended to lead to changed ways of working. These high-level concerns are reflected in national planning policies, with the planning policies stating that proposals for opencast sites should not be permitted (Welsh Government 2021, paragraph 5.10.14). The local planning authority finally reached a decision in April 2023 to refuse the application to vary the planning condition, opening a pathway to the taking of formal enforcement action against the unauthorised extraction of coal.

The Council served an enforcement notice in May 2023 requiring a cessation to the extraction of coal from the site. A notice specifies dates for when it ‘comes into effect’ and when compliance needs to be secured – after which any breach of planning control would constitute a criminal offence. The period between service of an enforcement notice and it coming into effect – which in this case was a period of just over one month – provides a window of opportunity for those served with the enforcement notice to make an appeal. This is the second opportunity the operator used to defer compliance and continue with the unauthorised extraction of coal pending the determination of the appeal. The appeal was never determined for reasons set out below, yet the making of the appeal secured additional time for the operator to extract coal.

The planning system in Wales also provides for a ‘stop notice’ as an enforcement measure available to local planning authorities and Welsh Government. A stop notice can be served to prohibit activities on site that are in breach of planning control and can bring activities to a stop in relatively short time frames. The stop notice therefore has various advantages over the use of an enforcement notice, both in timeliness of action against unauthorised development and in that any challenge to its service is via the courts through judicial review rather than by a merit-based appeal. The use of a stop notice may – depending on the challenge – open up the local planning authority or Welsh Government to liabilities for compensation, and this is one of the risks that can lead to reluctant use of a stop notice. Campaigning groups argued that either the Council or Welsh Government should issue a stop notice as a way of ending the overt continuation of a significant breach of planning controls (Coal Action Network 2023a). Advice was issued to the Welsh Government Minister for Climate Change in July 2023 on the use of a stop notice (Welsh Government 2023a). This advice highlighted that one reason the local planning au-

August 2003	Planning application submitted for ‘land reclamation incorporating the extraction of coal by opencast methods’
April 2005	Planning permission granted by National Assembly for Wales by ‘call-in’ decision
March 2011	Conditions on original planning permission amended at appeal – specific dates attached to time limits for extraction and restoration, but not extended – planning permission issued in revised form.
April 2015	Well-being of Future Generations Act
December 2018	Welsh Government planning policies identifies that planning permission for new coal extraction, including opencast sites, should not be permitted.
April 2019	Welsh Government declares ‘a climate emergency’
March 2020	Introduction of Coronavirus or ‘lockdown’ restrictions
March 2021	Welsh Government issues ‘coal policy statement’ to avoid the continued extraction and consumption of fossil fuels other than in ‘wholly exceptional circumstances’
September 2022	End of period for authorised extraction of coal from site – Planning application submitted to vary planning condition to extend life of existing opencast site to March 2024 and for restoration date to be deferred to June 2026 – application submitted five days before expiry of extraction period. Council determines that submission of planning application means it is not ‘expedient’ to take enforcement action.
October 2022	Welsh Government issues a ‘holding direction’ – restricting the council from granting planning permission pending decision on ‘call-in’ by Welsh Ministers
January 2023	Council planners report understanding that coal extraction from site has ceased. Data indicates that coal extraction was continuing.
April 2023	Coal Action Network issues letter to council and Welsh Government claiming lack of action by each was ‘unlawful’
April 2023	Council refuses application to extend period for extraction of coal
May 2023	Enforcement noticed issued by Merthyr Tydfil County Borough Council
June 2023	Enforcement notice scheduled to come into effect – but delayed by making of an appeal
June 2023	Legal advice issued to Coal Action Network
July 2023	Advice issued to Minister for Climate Change on use of ‘stop notice’
July 2023	Enforcement notice initially scheduled to require compliance but ‘delayed’ by appeal against the notice
September 2023	Minister for Climate Change notes ‘unilateral undertaking’ by operator to cease coal extraction by end of November 2023
October 2023	The Coal Authority expresses key concerns about ‘lack of preparedness’ for ‘imminent abandonment’ of mine by operator
November 2023	Active coal mining ceases at site – 15 months after date planning condition required cessation
January 2024	Senedd committee expresses continuing concerns about restoration of the site
April 2024	Evidence presented to Senedd Climate Change, Environment, and Infrastructure Committee by various stakeholders
Autumn 2024	Expected submission of a planning application for a revised restoration plan
December 2024	Date in the original planning permission by which restoration of the site to be completed and after care of site commenced for a period of five years

Tab. 1: Timeline: Ffos-y-Fran and East Merthyr Reclamation Site.

thority used an enforcement notice and not a stop notice was linked to funding the restoration of the site (see below). Welsh Government appeared reluctant to use their powers to serve a stop notice while the enforcement notice appeal was under consideration. In addition, the Minister for Climate Change noted in July 2023 that the mining company and site operator had issued a unilateral undertaking to cease coal extraction by the end of November 2023 (Welsh Government 2023b). The various stages of deferral and deliberation that led to inaction were now heading towards a conclusion to coal extraction simply by way of the operator nearing completion of extraction of coal. The attention of the local planning authority and Welsh Government increasingly turned from cessation of coal extraction to a more challenging problem – anticipating the abandonment of the site and the challenges of site restoration.

Abandonment

The inability of the planning system to bring the unauthorised extraction of coal to an end – estimated in one source to be 500 000 tonnes and equivalent to 1.6 million tonnes of carbon dioxide (Coal Action Network 2023b) – gave way to another concern of restoration of the site following cessation of extraction operations. The future restoration of an opencast mining site is a consideration when determining a planning application, and managed through planning conditions and funded through deposit and monies generated during the extraction period. Legislation relevant to the county within which the Ffos-y-Fran site is located sets out provisions requiring security for the future restoration of a minerals extraction site, which can be in the form of a bond or similar mechanism. This is to be managed by the local planning authority. This requirement did not apply to the former nationalised industry, the National Coal Board, and the later private operator was also exempt from the requirement for a time-limited period, a period which has subsequently expired. National planning policies similarly require landowners and developers of minerals sites to ‘ensure that sufficient finance is set aside to enable them to meet restoration and aftercare obligations’ (Merthyr Tydfil County Borough Council 2023, paragraph 5.14.56). This can be managed through an initial deposit of money and the building up of additional funds through the lifetime of the site.

It became clear as the site approached the end of its authorised extraction period that in-

sufficient funds had been set aside to finance restoration of the site. The securing of insufficient funding for restoration is again a significant weakness of the planning and licencing system to manage the implementation of the development, especially given that the 2005 planning permission for *Ffos-y-Fran* was presented as a ‘land reclamation’ project, with reclamation and restoration central to the rationale for the scheme. The Council’s report to planning committee in 2023 documented that the operator acknowledged the insufficiency of funds and that these would not cover the costs of the approved restoration strategy. The lack of funds for implementation of the restoration scheme was used as a supplementary argument to support approval of the extended period for extraction. The funds for restoration that had been built up over the life of the extraction period amounted to £15 million – a significant shortfall on the £120 million to £175 million estimated costs of now restoring the site to the previously agreed landforms. Godden (2023: 18) notes how the unauthorised extraction of coal continued “with no certainty where the profits are going” while restoration funds were openly acknowledged as insufficient. The inadequacy of restoration funds for the site had been highlighted almost a decade earlier in a Welsh Government research report on failures to restore opencast mining sites. The research noted for Ffos-y-Fran and the East Merthyr Reclamation Site that:

“there are very large overburden mounds which will finally need to be returned to the excavated void. Based merely on the likely cost of bulk earthmoving of those overburden mounds, and the final restoration and treatment of the surface of the 400 ha site, it is likely that the fixed bond of £15 m held by the LPA, Merthyr Tydfil County Borough Council, *falls well short of a worst case restoration cost which could be in excess of £50 m* based on the collected information” (Welsh Government 2014: 39, emphasis added).

In addition to the significant shortfall in funds available for restoration, public bodies also had to anticipate a situation where the private operator of the site would collapse at the end of unauthorised extraction of coal. The risk that the site would be abandoned after extraction and before restoration became a very real prospect. The Coal Authority – a body with responsibility for licencing coal mining and for managing the legacy of mining operations – made very clear its “key concerns for about the lack of preparedness for a *poten-*

tially imminent abandonment of Ffos-y-Fran surface mine by the operator” (The Coal Authority 2023, emphasis added). The Coal Authority criticised the lack of progress made by the Council in preparing for abandonment, the absence of a robust plan to manage risks, and that steps taken were ‘too little, too late’. The Coal Authority advised an ‘urgent’ need to establish an incident response team given the ‘clear risk to public safety and to the environment’. The Coal Action Network (2023b) was vociferous in its criticism of the operator citing “a £105 million black hole in the restoration budget” and a lack of accountability for a period of 15 months’ unauthorised extraction of coal.

The Climate Change, Environment, and Infrastructure Committee of the Senedd, the Welsh Parliament, returned to scrutinise the Ffos-y-Fran site at a session in April 2024. The papers presented to the committee included written evidence from the Coal Action Network, Extinction Rebellion Cymru, and Merthyr Tydfil County Borough Council (Climate Change, Environment, and Infrastructure Committee 2024a). The evidence confirmed that coal extraction had ceased in late 2023 and the focus of attention in the evidence was therefore on the failures of public bodies in bringing unauthorised extraction to an end. Coal Action Network was direct in its targeting of responsibility for regulatory failures:

“The almost unmitigated acquiescence of [Merthyr Tydfil County Borough Council] and the Welsh Government to Merthyr (South Wales) Ltd, to keep the company on-site has failed to deliver the benefits hoped for, and instead facilitated 16 months of illegal coal mining at Ffos-y-Fran, with no accountability”

Coal Action Network also highlighted the failure to deliver the benefits of restoration of the site as well as the increasing environmental risks linked to the ‘abandonment’ of the site by the operator, with increasing water levels in the extraction void:

“The Welsh Government must step in and take responsibility for Ffos-y-fran site, which has escalated to the currently filling void as a result of its refusal to take action earlier, despite the clear evidence of MTCBC’s *ongoing failure to control the situation*. The Welsh Government also has a *historic responsibility* as the body that approved the coal mine on appeal in 2005. Once in control of the site, the Welsh Government must deliver on the 2007 restoration scheme promised to the residents of Merthyr Tydfil – *anything less would amount to a be-*

trayal after 16 years of suffering air and noise pollution from the mine.” (emphases added)

The Ffos-y-Fran site is an instructive lesson in the very significant gap that can exist between aspiration and delivery— and how an imagined future of restoration and regeneration of a landscape can fail to materialise and be displaced by a situation of abandonment, environmental risk, and an uncertain future. Local residents continue to face uncertainty over the future restoration of the site two decades after the grant of planning permission. An alternative restoration plan is being devised while the void fills with water, a situation relayed in media as ‘the ultimate betrayal’ (BBC 2025). The next section engages in a thematic analysis of the key issues illustrated through the case study.

Analysis: time, governance, cyclical failure and accountability

This section engages in a thematic analysis building on the Ffos-y-Fran case study and extends the theoretical concepts introduced earlier. A key argument of this section is that the planning system fails in several of its fundamental purposes including to envision and manage the future. The themes examined below start with the principal theme of time and timings especially in respect of time-limited or ‘temporary’ permissions. The section then examines several other important themes related to aspirations for the future and delivery over time identified in the Ffos-y-Fran case study, including the governance framework and its capacity to manage capital interests, the reliance on ‘cycles of failure’ in the planning system, and the significance of environmental campaign groups in holding public bodies and others accountable for past decisions and commitments.

Time – temporariness, policy change, delay

Abram (2014: 142) asserts that planning operates within multiple temporal frames, including envisioning of futures and at differing levels of abstraction, “some of which are textualized in planning documents”. The principal textualization of temporal frames of relevance to the analysis of the Ffos-y-Fran site lie in the identification of ‘temporary’ operations and uses, as well as the articulation of specific timeframes in the planning permission. Minerals planning guidance has historically emphasised the ‘temporary use’ nature of opencast minerals sites

and promoted the high-quality restoration and aftercare of sites once the ‘temporary’ extraction period ceases (see Beynon et al. 2000: 49). Windemer’s (2019: 9) work explores the ‘temporary’ character of renewable energy development and she argues that “temporariness is anything but simple”. Temporary activities and developments are defined as such by the anticipation that they will cease at some point in the future. In some cases, the future point of cessation is ill-defined, while in others the point of cessation is clearly specified. In the Ffos-y-Fran case the end-point of extraction is one of the temporal frames that Abram (2014: 132) states “are fleetingly concretized into planning documents, documents which give the appearance of solidity and endurance, yet are constantly in the process of revision and reinvention”. The inaction in the face of unauthorised coal extraction at Ffos-y-Fran makes clear that those timeframes that appear concretised and solid can unravel and extend. Even ‘clock time’ – which Laurian and Inch (2019: 269) explain as a ‘commonsense’ understanding of time – is capable of deferral and manipulation at ‘end-of-life’ as evidenced in the planning episode of Ffos-y-Fran.

The temporary nature of opencast minerals extraction sites also creates an opportunity to engage at point of consenting with ‘Utopian time’ which “sees problems resolved in a future postponed, always out of reach” (Abram, Weszkalnys 2011: 10). One reading of the more recent events in the Ffos-y-Fran case is that the future has now ‘arrived’ and the period leading up to it has ‘run out’, yet the uncertainties over ‘the future’ of the site persist as a continuing ‘legacy’ of decisions made and actions taken – or not taken – in the past. The themes of aspiration and delivery echo in the following reflection on planning as a ‘promise’ or ‘compact’:

“emphasizing the imaginative aspects of planning allows us to see planning as a kind of compact between now and the future – a promise that may be more or less convincing. As well as asking what kind of promise planning is, we take our cue from philosophical investigations of performative linguistics to ask what a promise does and, in a similar way, ask what plans do as they make promises about the future. This also allows us to consider why the promise of planning is so often seen to break down” (Abram, Weszkalnys 2011: 9).

The failed promise of cessation at end-of-life – and the as-yet failed promise of site restoration – are plain to see in the Ffos-y-Fran case. These promises achieve extraction of minerals from the site over extended periods, and

an opportunity to defer actions and commitments into the future. Windemer (2019) similarly argues that ‘regulatory timeframes’ lead to a “focus on managing the present while leaving problems to be resolved in the future (Abram, Weszkalnys 2011)”. The Ffos-y-Fran case illustrates the very detailed management and consideration of the consenting stage of the minerals extraction site, focusing on securing planning permission. This consenting stage even ventured into the setting out of restoration plans for after extraction ceased – but appears to have left open to future resolution how those restoration plans were to be funded to ensure land reclamation. Restoration in the context of minerals extraction and land reclamation also has important temporal dimensions. The permission granted in 2005 was a means of dealing with the legacy impacts of earlier periods of extraction and despoilation of the landscape, including the generation of income to fund that restoration which, of course, did not accrue in sufficient quantity. Restoration also necessitates some documentation or imagining of the landscape prior to earlier workings on site, and the preparation of detailed plans for restoration of the site during and following extraction.

One of the principal challenges of ‘Utopian time’ and deferring matters to consideration in the future is that there can be significant changes in policy context over time (Windemer 2019). This can be important planning policy change or change of wider significance – what has been termed the temporal frame of what is happening ‘outside the planning process’ (Abram 2014: 142):

“Politics and policy changes can be seen to occur as a partial state response to the temporalities discussed above, but also have their own unique time signatures that impact the context of end-of-life decision making” (Windemer 2023: 502).

The most significant policy changes impacting the Ffos-y-Fran decision at ‘end-of-life’ stage were the Welsh Government’s planning policy amendments bringing an effective end to coal extraction as part of decarbonisation, as well as its declaration of a ‘climate and nature emergency’. This reflects a very significant change in policy context compared to the point of consenting the Ffos-y-Fran ‘land reclamation’ project – and a significant barrier to the operator extending life of the site through authorised means.

One of the reasons why ‘the promise of planning’ can break down is because of the tactical actions of stakeholders engaged in the plan-

ning system. The Ffos-y-Fran case also emphasises that “games of temporality are constantly being played.” (Abram 2014: 132). The most overt claim of ‘gaming’ the system was set out in legal advice issued to Coal Action Network (2023) and highlighted the tactical application for life-extension and variation of condition very close to the ‘expiry’ of the extraction period, as well as the appeal against the eventual service of an enforcement notice. These actions underscore that timing is “a crucial and deeply challenging dimension of planning practice” (Laurian, Inch 2019: 275) in both a conceptual and practical sense. Additional appeals by the site operator to ‘time lost’ due to restrictions imposed during the coronavirus pandemic, and some of the ‘exceptional’ reasons for enabling further extraction despite declarations of climate and nature emergency, all invoke conceptualisations of time and temporalities. This leads exploration of time and temporality “beyond the simple discrepancies between plan and action to the multiple temporalities that are at play, including the “negative” temporalities of delay or failure (Weszkalnys 2010).” (Abram, Weszkalnys 2011: 14).

Temporalities focused on ‘delay’ have often been explored in the planning literature through the lens of developers and landowners frustrated with the lack of speed of the planning system in delivering plans and decisions (Dobson, Parker 2024). Delay can play a very different role at ‘end-of-life’ stage of a development with stakeholders working to shape timescapes to other ends. Dobson and Parker (2024: 3) illustrate “how attempts to shape the planning timescape result in the creation of ‘political time’ that serves to preference some actors and goals over others”. Raco et al. (2018: 1188) explore delay and slowness in planning practice in policy making and how some business interests “manage the complexity and times of the development planning system and turn slow decision-making to their advantage” (Raco et al. 2018: 1188). Their context for exploring time and delay is very different to the Ffos-y-Fran case, yet they also echo similar practices in managing time to generate outcomes in particular stakeholders’ favour:

“highlights the conditions in and through which the *temporalities of planning* are deployed strategically and become politicised. Uncertainty over time frames gives additional flexibility to private sector actors to *reduce, or sometimes even withdraw from, commitments to provide social and community obligations.*” (Raco et al. 2018: 1176, emphasis added).

An emphasis on speed of decision-making may therefore be significant to developers at consenting stage – and some business interests may engage in ‘capture’ even in cases of delay at consenting stage – yet deliberations over ‘end of life’ stages of planning projects are characterised by delay as a means of deferring action against unauthorised development. The work of Raco et al. (2018) also chimes with Ffos-y-Fran case study as they identify that “the degree of regulation and oversight provided by planning authorities is being reduced in the wake of austerity cuts” (Raco et al. 2018: 1189). This loss of ‘bureaucratic oversight’ was evident in the Senedd committee’s examination of the lack of action at Ffos-y-Fran, identifying limited minerals planning experience or capacity within the local planning authority.

The final observation on time is the sense of *urgency* surrounding the taking of action at Ffos-y-Fran in its late stages. This was evident in the reference to potentially ‘imminent’ abandonment of the site by the operator following completion of the unauthorised extraction of coal, as well as the ‘urgent’ calls for action by campaigning groups. This is despite the significant lead-in times and scope for preparing for end-of-life of the opencast site – and, as is highlighted below, the very clear recognition in advance that there were significant risks of failing to secure sufficient restoration funds for Ffos-y-Fran. The anticipation and address of risks, and the early planning for site closure, appears to differ between different planning systems beyond the United Kingdom, with one report for Welsh Government noting that:

“The international mining community generally places greater emphasis on *early and detailed planning for closure* than is the case in Wales, with notably more emphasis on the social aspects of mine closure” (Welsh Government 2014: 5, emphasis added).

The report did not explain this apparent deficiency of the planning system in Wales, yet it further highlights some of the significant shortcomings of the planning system in delivering on its ‘promises’.

Changing landscapes of governance and capital

In addition to specific considerations of time, there are other significant themes of relevance to ‘aspiration and delivery’ identified through the Ffos-y-Fran case study. One theme is the framework for governing the activities of private capital interests and how these evolve over

time and the lifetime of a development. Beynon et al. (2000: 9) refer to the ‘flourishing’ of private capital through the post-war period within the opencast mining sector in the United Kingdom. The regulatory and governance framework designed to manage large-scale, extractive projects such as Ffos-y-Fran exhibits in its characteristics a *legacy* of an earlier nationalised sector. This framework does not always manage well the conditions of a now privatised, commercial sector, and especially a sector that is increasingly owned and managed in complex ways that makes it challenging to ensure accountability to their responsibilities.

Beynon et al. (2000) identified the significant changes in ownership, regulatory and policy contexts that have for decades impacted on minerals extraction. Similarly, Windemer (2023: 498) also highlights changes in ownership as having implications for end-of-life management of energy infrastructures. The Welsh Government (2014: 44) in its analysis of opencast restoration failures referred to a site where “the ownership has transferred to a company which reportedly is based off-shore, and the LPA is facing difficulties in getting final restoration implemented”. The sale of the Ffos-y-Fran site to another owner in 2016 led to “increased fear that commitments to restore the Ffos-y-Fran site will not pass to the new owner” (Mason, Milbourne 2017: 53). The Ffos-y-Fran case study therefore exemplifies the separation of benefits and responsibilities, with the operator able to continue with unauthorised extraction of coal, the unauthorised operation failing to deliver additional restoration funds, and with the operator ‘abandonment’ of the site being readily anticipated by regulatory bodies. Godden (2023: 18) attributes to locals within the community a feeling that site operators are ‘untouchable’ and unaccountable and capable of exploiting ‘legal loopholes’ and ‘bankruptcy declarations’ (Godden 2023: 19). The opencast coal mining sector has become extractive in both physical and social terms, enabling the extraction of value while deflecting longer-term responsibilities to the environment and to communities. This then has important implications for social, spatial and environmental injustice with the continuing concentration of deprivation despite the further exploitation of natural resources (Mason, Milbourne 2017: 33).

Predictable cycles of failure

An important dimension underlined by the exploration of ‘aspiration and delivery’ in the

context of minerals extraction, including the Ffos-y-Fran site, is what might be described as ‘cycles of failure’. The limitations and failures of earlier projects are used to justify future projects and further development. The quality of restoration of opencast sites has always been an issue of contention with a key element being the more limited ecological value of sites compared to prior to extraction (Beynon et al. 2000: 109; see also Milbourne, Mason 2016). The Ffos-y-Fran opencast mine was, of course, already presented as a ‘land reclamation’ scheme designed to enable restoration of historic despoilation through the use of opencast coal extraction – something that Mason and Milbourne (2017: 46) define as “assembling strategies” to promote resource extraction. The Ffos-y-Fran site raises much more fundamental concerns about the extent and nature of restoration, as well as which organisations will cover the costs of a revised restoration plan. A failure in respect of implementation is then used as a strategic, tactical advantage in promoting future development. This was evident in the application by the Ffos-y-Fran to extend the life of the site, with a key part of the argument being to facilitate future site restoration.

These failures in respect of site restoration are in many instances capable of being anticipated and planned for. For example, Welsh Government published research in 2014 – almost a decade before the precipitation of the Ffos-y-Fran ‘crisis’ – addressing “current and potential risks relating to inadequate restoration, and potential reasons associated with ‘failure to restore’” (Welsh Government 2014: 4). The research focused on key risks “where the bond or surety held by the LPA falls short of that level which might be required to restore a site in accordance with the planning permission/ Section 106 Agreement, should the site be abandoned or left unrestored” (4). Ffos-y-Fran was identified in the research as one of five larger sites in south Wales where there was a risk that there may be insufficient bond cover (Welsh Government 2014: 37). The reluctance of minerals planning authorities to use planning enforcement powers for breaches of planning conditions at opencast sites is a long-standing issue (see Beynon et al. 2000: 112f.) – and at Ffos-y-Fran it eventually became clear that the local planning authority’s decision not to swiftly take enforcement action was influenced by the prospect of securing some enhanced degree of restoration. The following extract from the Welsh Government report highlights several important factors, including the scope for

planning enforcement to ‘fail’, and for options to address that failure being very limited:

“If it is anticipated that an operator might fail to restore a site or if there is no or an inadequate bond and enforcement fails, *there are few if any remedies to enable the planning permission conditions to be met.* There are however, a few mitigation measures which can be examined ... [including] ... *to permit the extraction of more coal ... so generating additional income to the operator with the extended earthworks making some contribution to the progressive restoration of the existing site*” (Welsh Government 2014: 46, emphasis added).

These factors all point to a highly circumscribed planning system for managing end-of-life minerals extraction, a system that is compromised in several of its key claims to significance and relevance, including the capacity to plan for and manage future activities in time and space. In the absence of sufficient restoration funds built up over the lifetime of opencast sites, and a changed policy context driven by climate and nature emergency, the result is “Gigantic holes of scorched earth” and historic workings “littered across the landscape of Wales” (Godden 2023: 19).

Accountability – the importance of third parties in securing ‘delivery’

The consenting of development at a point in time includes making assumptions about the mechanisms that will support future delivery and implementation. The making of decisions also involves consideration of how to hold organisations and individuals accountable for their actions or inaction. Minerals extraction has in the past depended on a resourceful and empowered state that has capacity to monitor, promote accountability, and intervene. Public bodies are today facing significant resource and capacity constraints that impact on their historic role in promoting compliance. The case study of Ffos-y-Fran interestingly emphasises the importance of third-party scrutiny in monitoring of implementation in this era of diminished state capacity. These third parties play an important role in holding landowners and developers to the aspirations enshrined at point of consent, with Coal Action Network, Friends of the Earth Cymru, and The Good Law Project all providing checks and balances in adherence to planning conditions. Their engagement in trying to hold public and regulatory bodies to account, as well as to promote action, is particularly important. Beynon et al. (2000: 248) point

to changing ‘patterns of protest and opposition’ to opencast coal extraction over time. Much of this earlier analysis of protest and opposition has been of the stage of application for planning permission for opencast sites and the public inquiry as a mechanism for deciding appeals. The Ffos-y-Fran site illustrates the continuing significance of protest and opposition at ‘end-of-life’ stage of opencast mining. The dynamics of this opposition are now set within the context of climate change and declarations of climate and nature emergency. Mason and Milbourne (2017: 41) writing prior to the end-of-life stage at Ffos-y-Fran question whether using climate change arguments in opposition to extraction of coal was “too complex” to relate to people’s everyday lives – with oppositional argument during the consenting stage tending towards more immediate issues of localised health and environmental impacts and, of course, generation of local employment opportunities in an economically deprived area. Nevertheless, climate and nature emergency themes did feature as significant components in opposition to the unauthorised extraction of coal at Ffos-y-Fran. The organisations cited above were instrumental in highlighting public bodies’ own climate and nature emergency declarations. The organisations were also key to calculating the carbon emissions that arise from the unauthorised extraction of coal at Ffos-y-Fran, as well as sustaining attention on the failure of public bodies to act. Campaigning organisations may not consider all their actions to be successful, especially in not preventing the continuation of coal extraction and securing restoration of the site. They nevertheless play an essential role in scrutiny and challenge in the absence of other mechanisms for holding public bodies and private businesses to account.

Conclusion

The core themes of ‘aspiration and delivery’ are intrinsically temporal ones – a framing of what is hoped for at some point in the future and a mechanism for realising those aspirations. This paper has embraced this temporal dimension of planning in examining a ‘temporary’ or time-limited permission for the extraction of coal, assessed through a case study of Ffos-y-Fran, and in which the planning system, key stakeholders, and the wider regulatory and governance context failed to deliver the aspirations for future restoration of the site. The case study is a valuable one in examining the ‘performance

of time' through the planning system (Abram, Weszkalnys 2011: 14), highlighting careful deliberation at point of consent of what the future restoration of the site should be but then faltering in the period leading up to 'end-of-life' despite there being clear warnings and opportunities to address the problem. Local campaigners against Ffos-y-Fran argued "that the local authority and Welsh Government should have known this day would come" (Godden 2023: 19) – and various sources of evidence make clear that the situation was capable of anticipation and could have been better planned for. The analysis confirms Windemer's (2019: 2) assertion that the planning system is characterised by a "focus on managing the present while leaving problems to be resolved in the future (Abram, Weszkalnys 2011)". The case study of Ffos-y-Fran highlights very significant and systemic gaps between the aspirations of the planning system and delivery on the ground. Some of the more important limitations highlighted by the case study include the inability of the planning system and the wider regulatory framework to ensure the successful implementation and post-extraction restoration of minerals sites. The case also highlights very considerable weaknesses in the capacity of the planning system to enforce against unauthorised development, even where that development is clearly in opposition to current planning policies and is generating significant environmental and social impacts. The story ends with "a bleak forecast" for the future restoration of Ffos-y-Fran and other historic opencast sites across Wales (Godden 2023: 19) and a clear illustration of the limits and constraints of the planning system in imagining and managing the future. This can all lead to a feeling of disempowerment for local communities and those promoting environmental objectives. Changes that may lead to a more hopeful future for addressing the significant environmental impacts of unauthorised development include: improved resourcing of local planning authorities to enable more active monitoring of schemes through their lifetime, including in terms of compliance with conditions and securing financial resources for restoration; political systems that enable more decisive decision-making in the face of clear breaches of planning control; designing planning processes that limit the capacity to 'defer' action; and ensuring that decisions made in the past that make 'promises' for the future are sustained throughout the life of a planning permission and its implementation.

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