

**REF: APP/H0900/V/21/3271069**

**Former Marchon Site, Pow Beck Valley and area from Marchon Site to
St Bees Coast, Whitehaven, Cumbria**

Application for development of a new underground metallurgical coal mine and associated development.

**CASE MANAGEMENT CONFERENCE TO BE HELD AT 10.00 ON MONDAY
7 JUNE 2021**

**INSPECTOR’S PRE-CONFERENCE NOTE**

1. The case management conference will be led by Mr Stephen Normington, a Planning Inspector who has been appointed by the Secretary of State to make a recommendation about this application which has been recovered for determination by the Secretary of State. Attached as separate documents are instructions for joining the conference, a conference etiquette which is to be observed, and the conference agenda.
2. As the parties will be aware, there will be no discussion during the conference as to the merits of your respective cases and the Inspector will not hear any evidence. Rather its purpose is to give clear indication as to the ongoing management of this case and how the evidence will be presented at the Inquiry so that the event itself is conducted in an efficient and effective manner.
3. The Inquiry is scheduled to open at 10.00am on **Tuesday
7 September**. At this stage, it is envisaged that the Inquiry will proceed as a virtual event using Microsoft Teams. However, the possibility of a ‘blended’ event’ (part face-to-face and part virtual) will be reviewed following further Government guidance on lockdown easing and operational procedural reviews within the Planning Inspectorate. Should a blended event be possible then the Council will be expected to make arrangements for an appropriate and accessible suitable venue.
4. Other than the opening day, the Inspector considers that it would be prudent on subsequent days for the sitting sessions to open at 9.30am. It is currently anticipated that the Inquiry will sit for up to 16 days. The Conference will look in more detail at the likely duration and the number of sitting days will be reviewed.

**Matters on which the Secretary of State wishes to be informed**

1. Based on the information available at the time of making the direction, the following were the matters on which the Secretary of State wished to be informed for the purposes of his consideration of the application:
	1. the extent to which the proposed development is consistent with Government policies for meeting the challenge of climate change, flooding and coastal change in the NPPF (NPPF Chapter 14).
	2. the extent to which the proposed development is consistent with Government policies for facilitating the sustainable use of minerals in the NPPF (NPPF Chapter 17).
	3. the extent to which the proposed development is consistent with the development plan for the area: and
	4. any other matters that the Inspector considers relevant.
2. The Inquiry will also look at any benefits to be weighed in the overall planning balance, including the need for the coal and any implications of not proceeding with the scheme.

**Statements of Case**

1. Statements of Case (SoC) have been provided from:
* Applicant
* Cumbria County Council (CCC)
* Friends of the Earth (FoE)
* South Lakes Action on Climate Change (SLACC)
1. On 2 October 2020 CCC resolved to grant planning permission for the proposed development for a limited timescale up to end of 2049, subject to conditions and the completion of a Section 106 Agreement. The Inspector notes that the SoC provided by CCC indicates that the Council is now taking a neutral stance on the application. Whilst the Inquiry will proceed on this basis, at this stage no evidence of a formal resolution that this position has been adopted by CCC has been provided.

**Letters of representation**

1. The Inspector will have all letters of representation made to CCC about the application, along with written representations provided at Inquiry stage. These will be reported in summary form to the Secretary of State. All correspondence should be available for inspection at the Inquiry. The Inspector will confirm at the Inquiry that parties have seen all of the correspondence submitted.

**Main Considerations**

1. The Inspector will outline his preliminary views about the likely main considerations in this case in his open announcements when the Inquiry opens on 7 September 2021, after he has read the proofs of evidence. He may also refine them on the basis of the evidence before the Inquiry.
2. The Inspector will issue a Pre-Inquiry Note (PIN) as soon as he considers that he has enough information to do so about part d) of the call-in letter concerning ‘any other matters that the Inspector considers relevant’. This may help the parties to focus their submissions, but it should not prevent parties or interested persons from raising any other relevant issues at the Inquiry.
3. At this stage, it is likely that other matters that may be relevant include:
* The effects of the proposed development on the character and appearance of the area.
* The effects of the proposed development on the local amenity and living conditions of nearby residents with particular regard to users of public rights of way.
* The effects of the proposed development on biodiversity.
* The effects of the proposed development on heritage assets.
* The effects of the proposed development on tourism and recreation.
* The need for the coal having regard to likely future demand for use in the steel industry and the supply of the mineral.
* The effects of the proposed development on employment and the local and national economy.
* Whether the proposed development would be environmentally acceptable or could be made so by planning conditions/obligations, and if not, whether national, local or community benefits would clearly outweigh the likely impacts.
1. It is essential that all parties communicate effectively with one another to seek to narrow the issues for consideration at the Inquiry. This should be an on-going conversation. You are all requested therefore, to give consideration in advance of the case management conference as to whether the identified matters encapsulate those most pertinent to the outcome of the appeal, reaching agreement through discussion if possible.
2. The Inspector will review and possibly revise his views about the likely main considerations as more information becomes available in the lead up to, and during the Inquiry.

**Statement of Common Ground**

1. The Inspector notes that a Statement of Common Ground (SoCG) agreed by the applicant and CCC should have been submitted by **6 May 2021**. It is disappointing that this has not yet been formally submitted. Whilst this matter will be discussed in the Case Management Conference, the Inspector is in receipt of formal correspondence from the applicant that expresses some concerns at the extent to which the Council is collaboratively engaging in a meaningful and pro-active manner in the production of a SoCG.
2. The SoCG plays an extremely important part in the efficient running of the Inquiry, as required by paragraph B.9.1 of the Planning Inspectorate's Procedural Guide on Called-in planning applications. Therefore, a degree of reasonable behaviour by all parties is expected to be shown in its preparation, particularly with regard to an assessment of those issues which clearly could not have changed since the Planning Committee meeting of
2 October 2020.
3. The SoCG should not only confirm areas where there is consensus, but should also identify areas where there is disagreement, **summarising the actual reasons for those differences, rather than simply stating there is disagreement**. In doing that any topic based SoCGs should draw on the documentation submitted with the planning application, further documents submitted with the appeal and any reports commissioned by the Council, as well as the relevant local and national planning policies.
4. The applicant and CCC are respectfully reminded that an agreed SoCG is both required and expected. Notwithstanding the consideration of the reasonableness of behaviour, a failure by any party to pro-actively engage in a SoCG could lead to a situation where the Inspector is bound to reach a conclusion that matters on which there is no comment are not disputed.
5. For the same reasons of Inquiry efficiency, the applicant is also encouraged to consider entering into a SoCG with the Rule 6 Parties.

**Structure of the Inquiry**

1. The Inquiry itself will focus on areas where there is disagreement. With that in mind, the conference will explore how best to hear the evidence in order to ensure that the Inquiry is conducted as efficiently as possible.
2. After opening announcements, the Inspector will hear brief opening statements from the applicant and the Rule 6 parties. These should be no longer than 15 minutes and should also be available in writing.
3. It is suggested that the applicant presents its case first, followed by the Rule 6 parties, and then the Inquiry would hear from any interested persons. An agreed likely programme for the Inquiry should be submitted for the Inspector to consider no later than **23 August 2021**. This should include the names of witnesses, the order that they would be called, the subject to be covered in their evidence, and a time estimate for evidence-in-chief. Time likely to be required for cross-examination should also be indicated if possible. A timetabling session will be included as part of the Inspector’s opening announcements on 7 September 2021.
4. There will be a discussion about possible conditions and planning obligations which will be without prejudice to the case argued by those who take part in the discussion. This will not undermine their case and any questions the Inspector might have about possible conditions will be for clarification and will not be prejudicial to his recommendation for the application on its planning merits. The Inspector will, again on a without-prejudice basis, comment on the wording of suggested conditions. He would like the views in writing of all parties about the need for conditions and their wording. Where possible these should be agreed, and if not, state clearly any disagreements or suggested alternative wording.
5. After the discussion about conditions and any planning obligations the Inspector will invite closing submissions from Rule 6 parties and the applicant. These should be available in writing prior to the commencement of the closings.
6. At an appropriate point in the Inquiry the Inspector will make arrangements for an accompanied site visit. The parties are to give some advance thought to an itinerary for the site visit and whether it would be possible for the Inspector to see some aspects unaccompanied and prior to the opening of the Inquiry. If parties wish the Inquiry to visit particular sites in addition to the application site and its surroundings then an early indication would assist programming. The Inspector will not be able to hear representations or evidence on the accompanied site visit. Those attending will only be allowed to point out physical features. All evidence must be given at the Inquiry.
7. An agreed map and itinerary showing routes and viewpoints will be required in advance of the site visit. All parties, including the Rule 6 Parties are to work together in preparing an itinerary for the Inspector in this regard which should be submitted to PINS by **10 August**.
8. The Inquiry is not the appropriate forum for challenging the merits of current and any emerging Government policy or for debate on the direction of future policy. These are matters for consultation and discussion outside the scope of the present application and Inquiry. On the other hand, the Inspector will welcome views on how the proposal squares with relevant policy.

**Planning Obligation**

1. An early draft of the planning obligation is to be submitted by **3 August**, with a final agreed draft to be submitted by **10 August**.
2. The final draft must be accompanied by the relevant office copy entries and a CIL Compliance Statement prepared by the Council. The statement must contain a fully detailed justification for each obligation sought, including monitoring, setting out how it complies with the CIL Regulations, in particular the test of necessity in terms of how it would mitigate a particular harm arising out of the development proposed. It should include reference to any policy support and, in relation to any financial contribution, exactly how it has been calculated and on precisely what it would be spent. Although the restriction on the pooling of contributions has been lifted, the Statement will still need to set out whether any of the schemes are the subject of other pooled financial contributions, in order to allow the Inspector to be able to come to an informed view on whether any contribution sought in relation to this appeal is justified.

**Programming and efficient use of Inquiry time**

1. Although there will be no formal appointment of a programme officer, it would be helpful for CCC to consider the provision of some administrative assistance to the Inquiry. Such responsibilities, under the Inspector’s direction, will include:
* Assisting in co-ordinating the compilation of core documents
* Co-ordinating draft Inquiry programme
* Assisting with the compilation of a list of names and details about local residents and other interested persons who wish to appear at the Inquiry and make a statement
* Keeping records of attendance at the Inquiry
* Co-ordinating the submission of evidence during the Inquiry
* Maintaining the Inquiry library
* Most importantly acting as the point of contact between Inquiry participants and the Inspector outside the formal proceedings.
1. However, involvement in the Inquiry will be confined to such procedural matters, and the Inquiry Programme Officer will play no part in the Inspector’s recommendation on the application. For the time being PINS Case Officer will continue to be the main point of contact. After the start of the Inquiry all queries should be made to the Inquiry Programme Officer.

**Proofs of evidence and other statements**

1. Proofs to be submitted no later than 4 weeks before the start of the Inquiry on **10 August 2021**. The attached Annex sets out the preferred format and content of proofs and other material, which should be observed.
2. Comments on the evidence of other parties may be made in opening or closing submissions. The Inspector will request that an electronic Word copy of the final version of suggested conditions be emailed to the Case Officer at the end of the Inquiry.
3. Rebuttal proofs can save Inquiry time but should be provided only where there is a clear justification for them. Rebuttals must be confined to addressing specified evidence submitted by other parties. They must not be used to introduce new matters that could have been covered in main proofs of evidence. If rebuttal proofs are to be submitted, then these should be provided by **24 August 2021**.
4. If any reliance is to be placed on a planning obligation it must be completed, signed and dated before the Inquiry closes. Any legal submissions should be in writing, submitted before the end of the Inquiry, and include a list of references / copies of any judgments. A reminder that all proofs will be submitted with the Inspector’s report to the Secretary of State.
5. You are requested to give the above careful consideration in advance of discussion at the case management conference. Any request for evidence to be heard other than as currently envisaged will need to be fully justified.
6. The attached Annex sets out the preferred format and content of proofs and other material, which should be observed.

**Documents**

1. A list of Core Documents prefixed by CD should be co-ordinated by CCC/applicant in conjunction with other parties. Those presenting evidence should note that the Inspector’s recommendation will be based on the evidence and submissions put to him at the Inquiry. He will not be doing his own research or looking up references online. If parties consider it necessary for him to see material beyond what is set out in their proofs, it is up to them to provide it in copy. Simple references to published reports etc. or links to web sites are not sufficient, especially as web sites can be changed or deleted at any time. The Inquiry Document Library should be maintained by CCC.
2. Irrespective of whether the Inquiry is to be conducted as a virtual or blended event, the Inspector will require one set of hard copies of all documents. Arrangements for the collection of these will be discussed with the Applicant and CCC near the opening of the Inquiry. However, it is expected that CCC will take the responsibility for the provision of the hard copies.
3. Unique reference numbers will be given to all documents that are submitted to the Inquiry (ID). Inquiry Documents will be numbered sequentially as received. A copy of all ID’s should be added to the Inquiry Library. Normally no evidence or other material will be accepted after the close of the Inquiry. This would be a matter for the Secretary of State.

**Stephen Normington**

INSPECTOR

1 June 2021

**Annex**

**Content and Format of Proofs and Appendices**

Content

Proofs of evidence **should**:

• focus on the main issues identified, in particular on areas of disagreement;

• be proportionate to the number and complexity of issues and

 matters that the witness is addressing;

• be concise, precise, relevant and contain facts and expert

opinion deriving from witnesses’ own professional expertise and

experience, and/or local knowledge;

• be prepared with a clear structure that identifies and addresses

the main issues within the witness’s field of knowledge and

avoids repetition;

• focus on what is really necessary to make the case and avoid

including unnecessary material, or duplicating material in other

documents or another witness’s evidence;

• where case law is cited in the proof, include the full Court report/ transcript reference and cross refer to a copy of the report/ transcript which should be included as a core document.

Proofs **should not**:

• **duplicate information already included in other Inquiry material**, such as site description, planning history and the relevant planning policy;

• **recite the text of policies referred to elsewhere**: the proofs need only identify the relevant policy numbers, with extracts being provided as core documents. Only policies which are needed to understand the argument being put forward and are fundamental to an appraisal of the proposals’ merits need be referred to.

Format of the proofs and appendices:

• Proofs to be no longer than 3000 words if possible. Where proofs are longer than 1500 words, summaries are to be submitted.

• Proofs are to be bound in such a way as to be easily opened and read.

• Appendices are to be bound separately.

• Appendices are to be indexed using **projecting tabs**, labelled and **paginated**.