

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

PINS Ref: APP/H0900/V/21/3271069

LPA Ref: 4/17/9007

APPLICANT'S OPENING SUBMISSIONS

Introduction

1. The Applicant seeks planning permission for, in summary, a new underground metallurgical coal mine and associated development, a new coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line and a new underground coal conveyor (“the Development”).¹

2. The Development will take place in the Former Marchon Site, the Pow Beck Valley and an area from the Marchon Site to St Bees Coast, Whitehaven, Cumbria (“the Site”). A fuller description of the Site and its surroundings is set out in the main statement of common ground.²

¹ The full description of development is provided on p. 1 of the main Statement of Common Ground (“SoCG”) at CD 15.5, p. 122.

² See CD15.5, pp. 124 – 132.

3. The planning history of the Application is lengthy, and is set out in full in the Applicant’s Statement of Case.³ However, for present purposes, it is sufficient to note that prior to being Called-in by the Secretary of State, the Application had been carefully considered three times by the minerals planning authority, Cumbria County Council (“the Council”). Each time the Council’s professional officers, who have received considerable support from specialist external consultants, have recommended that planning permission should be granted, and each time members have followed that recommendation with overwhelming support.
4. Following the Secretary of State’s decision to Call-in the Application,⁴ Council officers have ‘decided’ (under what is said to be delegated authority) that the Council would adopt a position of “Strict neutrality” in the forthcoming public inquiry. However, it is important to note that this decision was borne out of administrative expediency and did not involve any reconsideration of the merits of the Application.⁵
5. Accordingly, the Inspector and Secretary of State are entitled to continue to give the Council’s previous decisions on the determination of the Application considerable weight – particularly since they enjoyed the support of both the democratically elected decision makers and the professional opinions of officers and external consultants.
6. In his letter directing that the Application should be called-in, the Secretary of State identified the following matters which he wished to be informed about:

³ CD 15.1, pp. 10 – 24.

⁴ Which was finally taken in March 2021 following two previous decisions by the Secretary of State not to call-in the Application.

⁵ See paras. 43 – 44 of the main SoCG at CD 15.5, p. 145.

- a. 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).
 - b. 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).
 - c. the extent to which the proposed development is consistent with the development plan for the area; and
 - d. any other matters that the Inspector considers relevant.
7. The Inspector subsequently identified the following matters which he considered to be relevant to the determination of the Application:
- a. The effects of the proposed development on the character and appearance of the area.
 - b. 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.
 - c. The effects of the proposed development on biodiversity.
 - d. The effects of the proposed development on heritage assets.
 - e. The effects of the proposed development on tourism and recreation.
 - f. The need for the coal having regard to likely future demand for use in the steel industry and the supply of the mineral. This will include the consideration of alternative technology for the steel industry.
 - g. The effects of the proposed development on employment and the local and national economy.

- h. 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.
8. Before providing an overview of the issues, it is pertinent to note that the single most controversial part of the proposed development is the impact that it will have on GHG emissions and climate change. Unusually, however, the evidence of those objecting to the scheme is not focused at the GHG emissions of the Development itself, which will be mitigated to ensure that they are net-zero compliant from day one. Instead, the focus of the evidence is on the climate impact of the global steel industry, which clearly does not form part of this application, and is outside the control of the Applicant.

Need for coking coal having regard to likely future use in the steel industry

9. The Development has generated significant controversy because it is a coal mine, and the word “coal” has become an emotive word that is seen as a major contributor to climate challenge and an obstacle to the transition towards a net-zero economy. However, the coal that the development will extract is not thermal coal. It is high quality coking coal, which is essential for primary steel manufacturing,⁶ and subject to a condition that will require it to be suitable for use in the steel industry.⁷
10. Those opposed to the Development object to the continued use of coal as a matter of principle. However, in doing so, they ignore the inconvenient truth, which is that coking coal remains essential to the steel industry and to the production of steel. That is why it continues to be classified by the European

⁶ See para. 53 of the UK Government’s Industrial Carbonisation Strategy at CD 8.14.

⁷ See proposed condition numbers 4 and 77 at CD15.5, pp. 156 and 188.

Union as a “critical raw material”.⁸ It is to be recalled also that neither National Planning Policy nor legislation prohibits the extraction of coking coal. Indeed, National Planning Policy continues to identify coal as a minerals resource of local and national importance following the recent review and amendment to this definition in July 2021.⁹

11. Wood Mackenzie, a leading international commodity consultancy, which specialises in producing in-depth analysis and forecasts of global and regional metals markets, have drawn upon their considerable expertise in this area to produce a forecast of the likely demand for coking coal up until 2050.

12. A key distinction between the work undertaken by Wood Mackenzie and the evidence produced by the Rule 6 Parties regarding the need for coking coal is that Wood Mackenzie have provided a forecast of what they consider is likely to happen. This is not a “business as usual” approach and it *does* take into account the likely penetration of alternative technology into the steel-making industry, but it does so on the basis of what they consider is likely to happen in reality. In contrast, the Rule 6 Parties rely upon scenarios (or pathways) which illustrate what they say needs to happen in order to achieve certain policy targets or ambitions. These scenarios are emphatically not forecasts. This is an important distinction.

13. Mr Truman will explain why he considers that the forecast produced by Wood Mackenzie is correct. Nevertheless, for completeness, Wood Mackenzie have also modelled alternative scenarios which illustrate what variations to the likely forecast might be needed to meet certain targets.

⁸ CD 9.14.

⁹ See Annex 2 to the NPPF.

14. Even adopting the most optimistic forecasts for the development of alternative technologies that are necessary to meet the 1.5 degree warming target, it is striking that no-one is saying that there will not continue to be a demand for coking coal in Europe throughout the 2020s and 2030s. At the moment, that demand is being met by coal that is being imported to Europe from the USA. The position into the 2040s – 2049 is more disputed. However, even then, it is clear that there will continue to be a global need for coking coal which WCM can continue to meet.
15. Furthermore, even if all reasonable forecasts turn out to be incorrect and demand drops more than anticipated for the period into the 2040s so that there is no longer a market for WCM, it is difficult to see what harm would arise. Plainly, WCM will not continue to mine coal if there is no market for it and a restoration bond has been secured to ensure that the site will be restored.
16. As part of their challenge to the need for the coal which will be produced by the Development, the Rule 6 Parties also take issue with WCM's coal specification and the quality of coal that will be produced by the Development. However, in doing so they overlook three important factors.
- a. First, the Development is backed by sophisticated investors with a track record in promoting minerals projects. It is frankly inconceivable that very significant sums of money would be spent on promoting the development of a mine that will produce coal for which there is no market. As Mr Kirkbride will explain, investment has been provided in phases following demonstration, and independent verification of, the asset.
 - b. Second, the Applicant is prepared to accept a condition which limits the output of the mine to certain characteristics. The run of mine coal will go

through a process of beneficiation in the Coal Handling and Processing Plant (“CHPP”) to remove undesirable characteristics. Parnaby Cyclones Ltd, who will provide the CHPP, have confirmed that the processed coal will be able to meet the specification limits in the proposed condition.¹⁰

- c. Third, blast furnaces require coke and not coking coal. Coke is made by blending a number of different coking coals together in a coke oven. This process allows the coke-maker to produce the ideal coke from many different coking coals, all of which have different characteristics and chemical compositions.

17. Mr Kirkbride has addressed these points, and explained why WCM coal will meet the specification that he has produced.¹¹ The strength of the market for WCM coal is also confirmed by the supply agreement WCM has entered into with Javelin Global Commodities (UK) Ltd, which is described in the letter provided by the CEO of Javelin.¹²

GHG emissions / climate change

18. The general science behind Climate Change and the scale of the challenge facing countries which are seeking to decarbonise their economies and limit the extent of global warming is not in dispute.

19. However, it is widely recognised (and self-evident) that these difficult goals cannot be achieved overnight. That is why, in the UK, the Climate Change Committee has published ‘pathways’ to meeting the net-zero obligation contained in Climate Change Act 2008 by 2050. This is also reflected in the wording of the NPPF, which states that “The planning system should support

¹⁰ See Appendix 2 of WCM/MAK/2.

¹¹ See Appendix 3 of WCM/MAK/2.

¹² See Appendix 6 of WCM/MAK/2.

the **transition** to a low carbon future in a changing climate” (emphasis added).

20. An issue in this case is not whether steps need to be taken to support the transition to a net-zero economy, but whether this development does not harm, and indeed, can contribute to that transition to net zero. It is all too easy to object to this development on the basis that it is a coal mine and coal is ‘dirty’ and ‘bad’, but (as is set out above) the reality is that some industries, and especially the steel industry, will continue to need coking coal for many years. Indeed, the very significant challenges in decarbonising the steel industry are not seriously in dispute.¹³
21. Once it is recognised that there is a continuing need for coking coal, which will continue to be met by imports from the USA irrespective of whether this Development gets consent, the objections to this mine amount to little more than ‘emissions offshoring’.
22. The focus of this inquiry should rightly be on the effects of this development, and it should not be hijacked to air wider objections against the UK, EU and global steel industries.
23. Since this application was first submitted in 2017, the Applicant is also proposing to provide GHG mitigation which aims to ensure that the proposed development does not result in any net additional GHG emissions, making it net-zero compliant from day one. That is a significant step, which will result in the further removal of the 0.4Mt CO_{2e} annual operational

¹³ See, for example, the IEA Net Zero Report, which notes that “The steel industry remains one of the last sectors using significant amounts of coal in 2050, primarily due to its importance as a chemical reduction agent, albeit mostly in conjunction with CCUS.” (CD8, p. 1906), and that steel is “among the most challenging sectors to decarbonise” (CD8, p. 1962); and p. 49 of the UN Emissions Gap Report 2020 at CD8, p. 389.

emissions which Lord Deben raised concerns about in his letter to the Secretary of State earlier this year.¹⁴ As far as the Applicant is aware, this would be the first net-zero, or even close to net-zero, compliant metallurgical coal mine in the world. Rather than having a negative effect on the UK's climate diplomacy image and efforts, as a number of objectors have suggested,¹⁵ it will provide a positive example of the difficult decisions that need to be taken to support the transition.

24. The GHG Assessment submitted in support of the proposal demonstrates what steps will be taken to avoid and reduce nearly 80% of the likely CO₂e emissions of the mine.¹⁶ Although every step will be taken to ensure that GHG emissions are avoided and reduced insofar as is possible in the first place, there will inevitably be some residual emissions which will then need to be offset. Friends of the Earth has indicated that it will be calling additional evidence which challenges the use of offsets, which the Applicant will respond to in due course. However, at this stage, it is important to note that offsets will only be used as a last resort, a commitment that is specifically required by the wording of GHG review mechanism in the section 106 agreement.¹⁷

25. The GHG Assessment demonstrates that the Proposed Development will not give rise to any significant effects on the environment from GHG emissions. Furthermore, it shows that the proposal complies with relevant UK Carbon Budgets and the Government's Industrial Decarbonisation Strategy, which does not rule out the use of coking coal as a net zero compliant option going

¹⁴ CD 8.13.

¹⁵ See, for example, para. 5.2.4 of [SLACC/BW/1].

¹⁶ See section 5 of the GHG Assessment at [WCM/CL/2], pp. 13 – 17.

¹⁷ See para. 12.1.2 of the draft section 106 obligation, which states that "the Acquisition of Carbon Offsets shall only be used as a last resort to offset any GHG Emissions that are not capable of being mitigated by Primary GHG Mitigation Measures and Secondary GHG Mitigation Measures".

forward, but instead notes that “any mining of the coal itself needs to be net zero compliant in the future”.¹⁸

26. In truth, the real objection relates not to the GHG emissions associated with the construction and operation of the mine, but the GHG emissions which might be caused by the use of that coal (once blended into coke) in blast furnaces to make steel.¹⁹ There are number of formidable difficulties with this objection.

- a. First, it is not consistent with the general approach that is taken to the assessment of development proposals and their environmental effects. The decision-maker is concerned with the effects of the Development for which consent is sought, not the effects of other completely unconnected developments that may use products made (or extracted) by the Development. For example, when considering a proposal for a car factory, it is not appropriate to try to predict the GHG emissions, air quality effects or noise impacts that may arise from the subsequent use of those cars. Any such “assessment” would be highly speculative depending on many unknown variables so as to be largely meaningless. Similarly, when considering proposals for an aggregates quarry, there is no requirement to assess the environmental effects of the road that may be constructed with that aggregate or the cement that it might produce. The difficulties with attempting to adopt such an approach are obvious (as is set out further below).
- b. Second, the steel industry is already heavily regulated. In addition to planning controls, it is also subject to environmental permitting and emissions caps.

¹⁸ CD 8.14, p. 53.

¹⁹ See, for example, pp. 23 – 25 of SLACC/PE/1; pp. 16 – 17 of SLACC/MG/1; pp. 28 – 31 of SLACC/PB/1; pp. 14 – 18 of FOE/JB1; and paras. 4.1 – 4.2 of FOE/JC1.

- c. Third, the approach advocated by the Rule 6 Parties would result in considerable double-counting and render the assessment of environmental effects meaningless.
- d. Fourth, the Applicant cannot have any control over the GHG emissions of the coke-maker or steelworks using coal which it has extracted. If it was necessary to quantify and assess the GHG emissions from those operations as part of the consideration of this proposal, it would not be possible to differentiate between the emissions from different steelworks. For example, no consideration would be given to the fact that one steelworks may have integrated carbon capture and storage and another might not. Moreover, there would be no opportunity to encourage or impose additional mitigation at the steelworks through the determination of this application. Again, these sorts of difficulties would render any assessment of those effects at this stage meaningless.

27. This position which the Applicant has consistently taken on the approach to the assessment of the GHG emissions caused by the end use of the coal which it extracts has now been broadly considered and upheld by the High Court in *R (Finch) v Surrey County Council* [2020] EWHC 3566 (Admin). Whilst that decision remains subject to an outstanding appeal, it is noted that, in contrast to this case, that case related to the combustion of oil in motor vehicles, where it was said that there was not any other mechanism of control.²⁰ Indeed, even in *Finch*, it was not suggested that it was necessary to assess the GHG emissions of the oil refinery.²¹ Accordingly, the rationale for not assessing the GHG emissions of blast furnace steel production in the present case is even stronger.

²⁰ *Finch* at [103] – [105].

²¹ *Finch* at [95].

28. Even if it was appropriate to take into account GHG emissions caused by the end-use of WCM's coal as a material consideration in the determination of this application, it will be the Applicant's case that this cannot be given any material weight since those emissions would simply be replacing emissions that would otherwise occur irrespective of whether the Development receives consent.
29. Mr Truman will explain why it is likely that WCM coal will provide an attractive replacement to higher cost American coal that comes with significantly higher associated GHG emissions, and refer to real world examples which illustrate the USA's role as a "swing supplier". He will also explain why Professor Ekins' reliance upon general supply and demand arguments to dispute the likely effect of substitution is overly simplistic and fails to have regard to specific characteristics of the coking coal market.²²
30. Accordingly, it will be shown that the Application is consistent with Chapter 14 of the NPPF and will not have any significant or unacceptable climate change impacts. On the contrary, if anything, the likely climate change effects of the Development weigh in favour of the scheme.

Effect on character and appearance of the area

31. Given the scale of the proposed development, it is striking just how limited its landscape and visual impacts actually are.
32. The Main Mine Site is located on previously developed land, and provides the opportunity to develop (and eventually restore) this brownfield site that has lain derelict for around 20 years. It is agreed by Friends of the Earth's witness,

²² These include: the way that HVA coking coal is benchmarked against the spot price of low volatile coking coal; the process of blending coking coal to make coke; and regulations restricting and disincentivising additional carbon emissions.

Mr Radmall, that landscape and visual benefits will arise from the removal of this “area of derelict land that has a blighting influence on the locality”.²³ It is also agreed that the mounds which are proposed to screen much of the development at the Main Mine Site “have a naturalistic profile with the potential to integrate with the local topography”.²⁴

33. It is true that the Main Mine Site will not be screened entirely from view, but nor would it be appropriate to do so. The Development will be a significant new local employer occupying a previous industrial site within the town of Whitehaven and it is right that it should be visible, to a certain extent, rather than completely hidden from view. Furthermore, much of the Main Mine Site will be enclosed within modern domes, which are well-designed and are a far cry from the visual clutter associated with many traditional minerals sites.

34. The conveyor to transport the coal to the rail loading facility (“RLF”) will be buried underground, so that only temporary landscape and visual effects will arise from its construction.

35. Aside from views from individual dwellings along High Road, the only significant landscape and visual effects will arise from the construction of the RLF in the Pow Beck Valley. However, these effects must be seen in context. The need for the RLF has arisen out of the decision to pursue a sustainable transport solution, which will see all coal exported from the Development by rail rather than road.

36. The RLF will maximise the use of existing infrastructure by being constructed alongside the existing railway line that already runs through the Pow Beck

²³ FOE/PR1, para. 4.26.

²⁴ FOE/PR1, para. 4.19.

Valley. That is the only practical site where it could be located. However, that being so, the Applicant has taken every step possible to minimise any adverse effects. The RLF will also be a structure of interest to visitors.

37. The Applicant will continue to try and resolve the recent technical dispute that has arisen regarding the quality of the visualisations provided in the LVIA through the landscape statement of common ground. However, it will be the Applicant's case that a proportionate approach should be adopted to the assessment of landscape and visual effects. Given the nature of this development, it was (and is) not considered necessary to produce Type 4 visualisations, and Mr Flannery will expand on this in the round table session. The Council agreed when it considered the proposed development, noting that scope of the LVIA was agreed and "sufficient information has been submitted to enable the nature of the development and its effects on landscape and visual amenity to be judged".²⁵ Indeed, it is precisely because of the relatively limited landscape and visual effects of the Development that it is not necessary to have Type 4 visualisations that comply with the SNH guidance.

38. Overall, it will be shown that the landscape and visual effects of the Development comply with policy and are acceptable when considered as a whole.

Effect on biodiversity

39. It is now clear from the 'rebuttal' proof provided by Dr Martin, on behalf of SLACC, that the areas of disagreement between the parties on the ecological effects of the scheme are relatively limited.

²⁵ See para. 6.141 of the Committee Report dated 19 March 2019 at CD 4.1, p. 37.

40. Dr Martin does not dispute, or seek to challenge, the findings of the HRA.²⁶

Nor does he challenge any of the conclusions regarding the ecological impacts and proposed mitigation (where necessary) for the development of the Main Mine Site, RLF and Main Band Colliery.

41. The areas of dispute essentially relate to:

- a. The impact on Roska Park / Benhow Wood and Bellhouse Wood, including the adequacy of the surveys undertaken for wildlife in these woods; and
- b. The biodiversity net gain calculation.

42. As Dr Shepherd explains, there is some uncertainty over the extent to which Roska Park / Benhow Wood comprises Ancient Woodland due to the historical industrial use of part of the woodland for quarrying and lime production, which may explain why it has not been included in the ancient woodland inventory (unlike Bellhouse Wood), and would affect its status in policy terms.²⁷

43. Dr Shepherd will explain why the surveys undertaken in respect of it were proportionate and in accordance with relevant guidance. However, and in any event, the Applicant now proposes to avoid any disturbance of these woodlands altogether by altering the construction method for the buried conveyor from 'cut and cover' to a trenchless construction for these sections of the route that would utilise 'pipe-jacking'.

²⁶ See para. 3 of SLACC/PB/2, Appendix 4, p. 33.

²⁷ See para. 2.10 of WCM/PS/3.

44. The avoidance of any loss of ancient woodland clearly represents a significant improvement to the scheme that was previously considered by the Council, and addresses the principal ecological issues raised by the Rule 6 Parties, particularly SLACC.²⁸ It is therefore surprising that these parties have objected to the amended method of construction which would remove this harm altogether, instead inviting the Inspector to consider the proposal on the basis that the loss of ancient woodland should be retained as part of the scheme. This disappointing response suggests that the Rule 6 Parties have no serious interest in protecting the Ancient Woodland or how best to avoid any adverse effects, and are simply seeking to stop the development at any cost.

45. In any event, the ‘Wheatcroft’ objection raised by SLACC (and apparently supported by FOE)²⁹ is completely unsustainable. As the Applicant has already set out in correspondence,³⁰ in order to make out a substantive objection to this ‘amendment’ to the scheme, it is necessary to demonstrate that the change proposed is so substantial that the amended development is not in substance that which planning permission was originally applied for (*R (Holborn Studios Limited) v London Borough of Hackney* [2017] EWHC 2823 (Admin), per John Howell QC at [66]). It is simply inconceivable that a relatively minor change to the construction methodology for two small sections of an underground conveyor could result in a substantial change to the Development and no explanation has been given by SLACC as to why this is the case. Far more significant amendments are routinely made to developments without falling foul of this principle. Indeed, were it not possible to make such amendments it would be virtually impossible to impose appropriate conditions to mitigate harmful effects that

²⁸ See paras. 6.1 – 6.10 of SLACC’s Statement of Case at CD 15.4, pp. 108-109.

²⁹ FOE initially supported SLACC’s letter dated 23 August 2021, but then subsequently noted that it was a matter for SLACC since it was not presenting any evidence on this issue.

³⁰ See letter from Ward Hadaway dated 26 August 2021.

are found to exist following disputed evidence on a topic, which is the point of the EIA process in the first place. Insofar as SLACC's procedural fairness and EIA complaints are concerned, these are addressed through the publication of the regulation 22 request, which will be consulted upon, and the opportunity to consider and address the amended proposal during the inquiry process.

46. A biodiversity net gain assessment has been carried out by BSG Ecology Ltd using the latest DEFRA metric 3.0. This indicates that the Development will deliver a net gain of greater than 10% over the lifetime of the project over the current baseline value of the site, and Dr Shepherd will explain why the calculation is robust and should be preferred over Dr Martin's "simple sense check model".³¹

47. As with the landscape and visual effects, the Applicant will seek to further narrow and clarify the areas of dispute in advance of the round table session on ecology through a topic-specific statement of common ground.

Economic benefits

48. The Development will undoubtedly provide substantial economic benefits at a local, regional and national level. As Mr Kirkbride's evidence sets out, these include:

- a. The provision of up to 532 permanent staff positions (averaging 491 direct jobs over the lifetime of the project), with average salaries at around 1.86 times the UK average, and a commitment to fill 80% of these positions from the local community wherever possible.

³¹ Para. 3.6 of SLACC/TM/1.

- b. The offer of up to 50 local apprenticeships over a rolling 24 – 36 month period, and collaboration with local educational providers, such as The Lakes College at Lillyhall, to develop training course curricula based on WCM's future needs.
- c. The creation of 1,077 indirect and induced jobs in the wider supply chain.
- d. An average beneficial impact on annual regional output of £299m, supporting 637 regional positions, with an average regional GVA of £185m.
- e. An average annual additional impact on national output of £495m, with an average national GVA of £380m.
- f. The export of WCM coal to the EU would be likely to result in a 1.8% improvement in the existing balance of trade deficit, which currently stands at £14.3 billion.

49. Mr Kirkbride's analysis is further corroborated by the detailed independent economic analysis carried out by NERA Economic Consulting.³² In contrast, Ms Diski's evidence, on behalf of SLACC, does not provide any alternative analysis of the economic benefits. It does not appear to be based upon any understanding of the operational requirements of the Development, and cannot provide any justifiable challenge to the evidence of Mr Kirkbride on this issue.

50. The clear and substantial economic benefits of the Development are also recognised by the following local stakeholders, who are well-placed to judge the local impact that it would be likely to have:

- a. Copeland MP Trudy Harrison
- b. Allerdale MP Mark Jenkinson

³² See appendix 1 of WCM/MK/2.

- c. Copeland elected mayor, Mike Starkie
- d. Copeland Borough Council
- e. Allerdale Borough Council
- f. St Bees Parish Council
- g. Whitehaven Town Council
- h. Chris Whiteside, County Councillor for (Egremont North & St Bees)
- i. Britain's Energy Coast
- j. The Lakes College
- k. The Lonsdale Estate

51. It will be shown during the course of the inquiry that this support is well-founded and that the substantial economic benefits of this development should not be in any doubt.

Other matters

52. The Environmental Statement demonstrates that the Development will not have any other unacceptable environmental effects or result in any other policy conflicts.

53. This has been supplemented by the following recent updates (not already discussed above):

- a. The historic environment addendum assessment carried out by Headland Archaeology³³ provides a more detailed assessment of the potential impacts that the development may have on the significance of the Grade II listed Scalegill Hall, and concludes that its setting only makes a minor contribution to the significance of the asset and will not be adversely

³³ See appendix 2 to WCM/ST/2.

affected by the proposed development. Accordingly, it concludes that the Development will not cause any harm to the significance of this designated asset.

- b. The Development will not result in any unacceptable environmental impacts as a result of noise, dust and vibration, which is reiterated in the recent additional environmental information submitted as part of the regulation 22 request.
- c. The updated highways modelling shows that there will be no unacceptable impact on road safety or the operation of the highways network.

54. The alleged impact on tourism is not supported by any objective evidence nor is there any acknowledgement of the adverse environmental impacts of excessive tourism on the Lake District and surrounding countryside. The sum of this objection relates to the landscape and visual impact that the Development would have on an extremely small section of the Coast to Coast walk. It is not disputed that there will be visual impact on users of this path, but that identified impact does not, in and of itself, justify the leap of faith to assert that there will be a material / appreciable impact on tourism without any further justification. As Mr Thistlethwaite explains, it is difficult to imagine that this development would seriously put people off walking the Coast to Coast. Moreover, the Development will make provision for the restoration of various elements of mining heritage, such as the Haig mining museum, that may actually encourage more tourism.

Conclusion / planning balance

55. It will be shown that the development complies with the development plan as a whole and, in particular, Policy DC13, because it does not have any

unacceptable environmental and social impacts (taking into account relevant conditions and planning obligations); and, in any event, provides national, local and community benefits that clearly outweigh the likely impacts.

56. It will also be shown that the development complies with the relevant chapters (14 and 17) of the NPPF, including both alternative limbs of the policy test in para. 217,³⁴ and that there are no other material considerations which indicate that planning permission should be refused as a departure from the development plan.

57. The Council reached the same conclusion with regard to the second limb of the DC13 and para. 211(now 217) policy tests (national, community and local benefits that clearly outweigh its likely impacts) on the three separate occasions which it considered the application. This is a matter that should be afforded considerable weight, especially bearing in mind that, at that stage, the balance undertaken by the Council included a number of significant adverse impacts³⁵ that have now fallen away. Therefore, the balance under the second limb has, in fact, been considerably strengthened in favour of granting consent since the Council last considered the application.

58. Accordingly, in due course, we will invite you to recommend to the Secretary of State that planning permission should be granted for the proposed development.

Gregory Jones QC

Alexander Greaves

³⁴ Noting that the first limb under para. 217 of the NPPF differs slightly from the policy test in DC13 in that it only relates to whether the extraction of coal is environmentally acceptable, or can be made so by planning conditions or obligations.

³⁵ Such as the loss of ancient woodland, operational GHG emissions that will now be mitigated, and less than substantial harm to a designated heritage asset (Scalegill Hall).

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7 September 2021
