TOWN AND COUNTRY PLANNING ACT 1990 SECTION 77

TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000

APPLICATION REFERENCE 4/17/9007 FOR DEVELOPMENT OF A NEW UNDERGROUND METALLURGICAL COAL MINE AND ASSOCIATED DEVELOPMENT AT FORMER MARCHON SITE, POW BECK VALLEY AND AREA FROM MARCHON SITE TO ST BEES COAST, WHITEHAVEN, CUMBRIA

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

**OPENING STATEMENT ON BEHALF OF CUMBRIA COUNTY COUNCIL**

1. Since its original submission in 2017 the application has had a long and protracted history leading up to this inquiry. The complexity of the project, amendments to it over time, the ever-evolving debate concerning how to tackle climate change and the controversy of the proposals, reflected in strong support from some quarters but vehement opposition from others, has presented the Council as mineral planning authority with no easy task. The measure of that task may be gauged by the fact that, in the course of its consideration of the application, the Council has been subject to not just one but two sets of proceedings for judicial review, one from an opponent of the mine and one from WCM itself.
2. But the decision is now out of the Council’s hands and rests with the Secretary of State who will, following this inquiry, have to grapple with the considerations which have previously taxed the Council and the fresh considerations arising since.

1. The application, as participants in this inquiry are no doubt already well aware, has been considered by the Council’s Development Control and Regulation Committee (“the Committee”) on no fewer than three occasions. On each occasion (19th March 2019, 31st October 2019 and 2nd October 2020) the Committee resolved to support the application. For various reasons these resolutions never resulted in the issue of a planning permission.
2. Most recently, following amendments to the application by WCM to remove “middlings coal” from the project and the submission by the company of an additional greenhouse gas assessment, the Committee considered the application on 2nd October 2020 and resolved again to support it.
3. However, the Council was legally unable to issue the planning permission following that resolution because a direction from the Secretary of State was in place which prevented this from happening and, moreover, a [section 106] legal agreement to secure various planning obligations had not been completed.
4. Those factors remained unchanged when, in December 2020, the Climate Change Committee published its Report on the Sixth Carbon Budget but by the end of January 2021 the Council would have been in a position to issue the planning permission because the direction had then been lifted and the section 106 agreement had been completed to the point where all that was required was execution of it by the Council.
5. However, the Council was now faced with the dilemma whether, in the light of the Sixth Carbon Budget Report, it was appropriate that it should refer the application back to the Committee in order to consider whether the Report affected its previous resolutions. After careful consideration, the Council’s Executive Director Economy and Infrastructure decided on 8th February 2021 (in due accordance with her delegated powers under the Council’s Constitution and entirely reasonably in the circumstances) that the application should be referred back to the Committee for reconsideration.
6. The events that then unfolded overtook that decision with remarkable rapidity. WCM instituted judicial review proceedings on 5th March 2021 challenging the decision to refer the application back to the Committee. However on 11th March 2021 the Secretary of State decided that the application should be called-in meaning that from that date the fate of the application is now entirely for him, and not the Council, to decide. The call-in letter cited, among other things, both the delay that the outcome of the litigation would cause to the determination of the application were it not called-in and the fact that the implications of the Sixth Carbon Budget Report for the application should be explored within a public inquiry. Unsurprisingly, WCM then withdrew its judicial review.
7. Subsequently, in decisions made (again in due accordance with the Executive Director’s delegated powers under the Council’s Constitution) on 20th April and 5th May 2021 it was concluded that, in all the circumstances, the Council’s position at the inquiry should be one of **strict neutrality**, involving neither support for nor opposition to the application, and that the Council would not participate substantively in the inquiry save by way of this opening statement and in the session devoted to conditions/the section 106 agreement. This position, which remains entirely unchanged, has long since been communicated to all parties in the Council’s Statement of Case, was reiterated at the case management conference on 7th June 2021 and the inquiry timetable has been organised accordingly.
8. The Council will, however, be available throughout the inquiry to help you, Sir, with any queries which fall within the Council’s remit to answer.

Christopher Katkowski QC

Alan Evans

7th September 2021