



WWF-UK

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Rt Hon. Robert Jenrick MP
Secretary of State
Department for Communities and Local Government
2 Marsham Street
London
SW1P 4DF

19th June, 2020

Dear Secretary of State,

APPLICATION REFERENCE NUMBER 4/17/9007 – WEST CUMBRIA MINING

WWF-UK wrote to you in July 2019 to ask you to call in the previous application made by West Cumbria Mining, which was approved by Cumbria County Council's Development Control and Regulation Committee; you declined to do so. The county council decided to grant planning permission and local campaigners commenced judicial review proceedings.

Following the grant of permission to proceed with the challenge, the developer filed an amended planning application to develop the coal mine. However, we consider the case for you to call in this application is strong, particularly in light of events occurring since we wrote to you last summer, and some of the information submitted by the developer in support of the amended application.

Caborn criteria

We consider that at least two of the Caborn criteria for call-in are met in this case. The first is that the proposal conflicts with national policy on important matters – in particular policy on mitigating climate change, the presumption against coal extraction in para. 211 of the National Planning Policy Framework, and duties to reduce CO₂ emissions under the Climate Change Act 2008 and under international law by the Paris Agreement. As we set out in our correspondence of last year, the development is in breach of policy adding to the global coal stock, assumes a long-term reliance on coking coal that is contrary to the trajectory indicated by UK and EU climate policy and legislation (informed by the Paris Agreement) and seeks to put in place new, long-term and environmentally invasive infrastructure.

Second, and again as per our letter last year, the proposal gives rise to national controversy; our previous letter provides evidence of this. Since our last letter, the application has been subject to judicial review proceedings and a wide cross section of groups have spoken out against it, including local campaigners, national NGOs (e.g.



President: His Royal Highness,
The Prince of Wales KG, KT, GCB, OM
Chief Executive: Tanya Steele

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Green Alliance, WWF) and independent academics (e.g. Professor Ekin).

You will be aware that the application by Banks Mining for an open-cast coal mine at Highthorn, Northumbria was called in and remains undetermined. So far as administrative law imposes a duty to treat like cases alike, WWF suggests you must give careful consideration to treating Woodhouse Colliery in like manner, calling it in.

Detail

We see nothing in the revised planning application that negates our original three grounds for objecting to the proposed project (set out in more detail in our letter to you of 15th July, 2019). These are set out (in summary) below together with a number of new points in response to the amended application.

- That **government is committed to a net-zero greenhouse gas emissions target by 2050**, under the Climate Change Act 2008 – a decision that the Committee on Climate Change is clear “must be embedded and integrated across all departments, at all levels of government, and in all major decisions that impact on emissions.” The iron and steel industries – the customers for coking coal produced from this proposed mine – are no exception to this.
- The **declining need for coal production of this nature over the short-term and over the 50-year proposed lifespan of the project**, and the **impact on greenhouse gas emissions of extracting it** – in short, whether the benefits from the project outweigh its likely environmental impacts. The previous case concluded that industry’s need for metallurgical coal outweighed the environmental impacts, but with no sound evidence that coal from this proposed colliery would replace, rather than supplement, existing supplies, whether in the UK or in other markets.
- The **impact on the rights of children and future generations**. A mine would generate significant carbon emissions over the course of the next 50 years and for at least 20 years after the UK is required to meet its net zero greenhouse gas emissions target in 2050. The consequences of those emissions (eg: in terms of their contribution to global heating) and the responsibility to offset them to meet the new 2050 target will fall disproportionately on the young, impacting on their human rights – including Article 8 of the European Convention of Human Rights in a manner which we believe cannot be justified at a time of climate crisis. The mine is also liable to generate significant air quality impacts and it is well established that air pollution disproportionately affects the young because their lungs are still developing¹. As set out previously, the UN Convention on the Rights of the Child applies here (because the ECHR is in play) and requires decision makers to ensure that the best interests of children are a primary consideration and that the impacts of the decision on children are assessed and taken into account. There is no evidence that such an assessment has been undertaken in relation to the amended application, hence the flaw identified previously remains.

New grounds

- **Global footprint** – the developer has failed to assess the carbon impacts of use of the coal in steel foundries overseas. WWF considers that the exported

¹ <https://www.blf.org.uk/support-for-you/risks-to-childrens-lungs/air-pollution>

emissions (must be assessed pursuant to the council's duty to take account of the Paris Agreement following important new case law (Friends of the Earth v Secretary of State for Transport)). Paris provides a temperature limit which is the shared responsibility of states to achieve. It is therefore unsustainable not to take into account the emissions arising abroad as a result of activities within the UK when the duty to achieve the temperature limits in the Paris Agreement are imposed collectively on all states. Further, WWF argues that the developer's approach either fails to comply with the EIA Directive or fails to enable the planning authority to take account of material consideration by failing to assess the likely scale of the impact of burning the coal abroad.

- **High carbon development** – the developer has wrongly categorised the development as “low carbon” because it has failed to assess the exported emissions as aforesaid. No consideration has been given to the likelihood that coal which may be edged out of use in European steel works by coal produced from the development would be burnt regardless leading to an overall increase in global greenhouse gas emissions. This fact flows both from the laxity of current commitments made by states under the Paris Agreement by way of Nationally Determined Contributions to date² and the failure of many states (including the UK) to prohibit exported emissions in domestic legislation. Nor can the section 106 agreement proposed by the developer (to assess every 5 years whether the development continues to comply with carbon budgets) remedy the problem because carbon budgets do not build in exported emissions either. Far from being low carbon, the development is arguably high carbon, will add significantly to the emission of greenhouse gases (understood in a broader sense) and therefore conflicts with NPPF para 211. It must be called in.
- **Net Zero** – the net zero target was adopted before the original planning application was resolved to be granted by the County council. However, there is a suggestion in the amended planning application that this is not for the planning authority to take account of (because the duty in the Climate Change Act fastens on the Secretary of State). WWF is confident that the Secretary of State does not take such a view and he agrees with us that the target is a material consideration for the purposes of section 70 of the Town and Country Planning Act 1990. . However, to ensure the planning authority does not fall into error, WWF considers the safest route would be for the Secretary of State to call in.
- **Carbon plan** - no consideration has been given to the fact that government has yet to adopt a carbon plan which sets out how the net-zero target will be met – nor has it yet explained how it will bring itself into compliance with carbon budgets from the mid-2020s onwards. By granting planning permission at this point for such a long-term, high carbon development, the council risks locking in high carbon infrastructure for many decades to come thereby pre-empting important decisions about the UK's pathway to net-zero which are pre-eminently for ministers to take. A decision to grant would be premature at this stage.
- **Equality** – the council is subject to a duty in domestic law to have regard to the need to advance equality of opportunity as between people who have protected characteristics and those who do not (section 149 Equality Act 2010). As set

² <https://climateactiontracker.org/global/temperatures/>

out above, the development will impact disproportionately on the young yet no Public Sector Equality Duty assessment appears to have been undertaken. Should the failure continue, it leaves the application vulnerable to challenge.

We cannot decarbonise our economy at the speed and depth required to avert catastrophic impacts of climate change by substituting one source of fossil fuels for another.

WWF-UK has modelled an emissions reduction scenario for the UK to 2045 and to 2050 in a report with Vivid Economics, entitled *Keeping It Cool*³. This demonstrates the degree of decarbonisation needed in each sector, as well as the overall pathway. This makes clear that we will not need metallurgical coal for the next 45-50 years that this mine will be producing it. We do not need a new source of metallurgical coal in the short-term and it is spurious to argue that the emissions from this coal will be slightly lower than existing sources, when to achieve this would (a) add to the existing stock of metallurgical coal in the marketplace overall, (b) do so for far longer than any country can be relying on fossil fuels, and (c) do so in a way that generates new emissions from the construction, running and transport out of the country of the coal produced at the mine. It is clear that the need case in respect of the application is simply not made out.

Keeping global warming to 1.5°C requires that we stop using coal, as soon as possible, both for power generation and industry. Modelling by a group of 20 researchers indicates that keeping to 1.5°C without geoengineering requires the virtually complete elimination of fossil fuel emissions and fossil fuel infrastructure by 2050 and that global coal production must decline by 5886 million tonnes a year in 2015 to only 407 tonnes in 2050 – a reduction of around 93%⁴.

Given this and given the UK's avowed global leadership on climate change – not least as holders next year of the presidency of the crucial UNFCCC Conference of the Parties (COP) 26 – allowing new coal production on its own shores would be perverse. Not only does it send a particularly unwelcome signal to the wider world about its commitment to climate action, but it adds to the already daunting scale of decarbonisation that would be required in other sectors in order to make net-zero possible by 2050.

Additionally, it continues to pile the costs of delayed climate action, and of climate impacts, onto children and future generations.

This is most definitely a consideration for national government (owners of the legally-binding target for net-zero by 2050), for local government (who cannot simply abrogate their responsibility for additional emissions from projects such as these on the basis that they are but one small contributor), and for local people (who will bear the costs of growing climate impacts).

³ <https://www.wwf.org.uk/sites/default/files/2018-11/NetZeroReportART.pdf>

⁴ Teske S. Ed. "Achieving the Paris Climate Agreement Goals, Global and Regional 100% Renewable energy scenarios with Non-energy GHG pathways for +1.5C and +2C" <https://link.springer.com/book/10.1007%2F978-3-030-05843-2>

We object to this proposal and we believe that you should call it in.

Yours,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Gareth Redmond-King.

GARETH REDMOND-KING
Head of Climate Change