

Cumbria County Council's

Statement of Case

Application 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, by West Cumbria Mining Ltd

Planning Application no. 4/17/9007

Appeal Reference APP/H0900/V/21/3271069

05 May 2021

1.0 Introduction

- 1.1 The proposal is for the development of a new underground metallurgical coal mine and associated development at the former Marchon site on High Road, Whitehaven. The proposal has a relatively long planning history, and the application subject to this call-in Inquiry was last considered by the Development Control and Regulation Committee of Cumbria County Council on 2 October 2020. The Council resolved to grant planning permission for a limited timescale up until the end of 2049, subject to conditions and a section 106 agreement.

- 1.2 Notwithstanding that resolution, the Council has now decided (as later explained in this document) that its position on the application is one of neutrality, neither supporting the application nor opposing it. As a result of the Council's neutral stance, it does not propose to call any witnesses or provide any evidence to the Inquiry (save in relation to proposed conditions/obligations), and the information in this document is provided as an historical reference of the Council's position as it stood when resolving to grant planning permission in October 2020, a factual account of developments since then and a survey of relevant policy.

2.0 The site

- 2.1 The main mine head and surface processing facilities would be located on the southernmost 52 hectares of the former Marchon chemical works. At its peak, the chemical works was a major producer of sulphuric acid and other chemical detergent ingredients and employed around 2,500 people. The site closed in 2005 and was cleared over the following year, however historic contamination associated with the former uses is known to remain.
- 2.2 Access to the mine itself is proposed along the existing drifts built for access to the former anhydrite mine. The existing drifts are proposed to be extended in cross section to facilitate access. Further access would then be formed in the geology above the old drifts to pass above the old mine workings before accessing the coal seams.
- 2.3 There are two restored landfill sites adjacent to the main site, which retain some associated infrastructure in association with their post closure management. An underground conveyor link is proposed to transfer processed coal to a Rail Loading Facility in the Pow Beck Valley. The route is mainly pasture used for grazing.
- 2.4 The proposed rail loading facility and sidings would be constructed on a greenfield site adjacent to the existing railway in the Pow Beck Valley and accessed through the historic access for the former Main Band Colliery.
- 2.5 More detail in respect of the proposed site is contained within the Statement of Common Ground.

3.0 The proposal and its evolution

- 3.1 The applicant, West Cumbria Mining (WCM) is a company that has been specifically created with the objective of developing the metallurgical coal resources in West Cumbria. The company has three licences granted by the Coal Authority, including two large offshore licence areas and a smaller onshore licence area.
- 3.2 Metallurgical coal is also commonly known as 'coking coal' and is used in the process for the manufacture of steel. The initial phases would mine relatively small amounts of coking coal from under the land at Whitehaven, however the minerals would be predominantly mined from under the sea and then brought to the surface for processing indoors, within a new facility located on the former Marchon site in Whitehaven. Processed coal would then be transferred by underground conveyor to trains using a new loading facility and sidings in the Pow Beck Valley.
- 3.3 Whilst the principal mineral development proposed is for the extraction of coal under the sea bed off-shore and will require a licence from the Marine Management Organisation, the onshore elements of the proposal and the extraction of coal from underneath the land (taken as the point above the mean low water mark) require planning permission.
- 3.4 The Council previously resolved to grant planning permission for WCM's proposed underground metallurgical coal mine on 19 March and 31 October 2019. In May 2020 WCM amended their original application in respect of the products proposed to be produced by the mine. Originally it was proposed to produce a high grade coking coal for steel manufacture, and a secondary residual "middlings" coal product (no more than 15% by weight) that could be put to non-energy generating uses. The amended application changed the

production process so that only a single coking coal product would be produced.

- 3.5 More detail in respect of the proposal is included in the Statement of Common Ground.

4.0 The Council's consideration of the proposal to date

- 4.1 The original planning application for the proposed mine was submitted in May 2017. This proposal was for the extraction of metallurgical coal and a middlings coal by-product. Further information on the scheme was requested, submitted, and consulted upon, however, in April 2018 WCM decided to make significant revisions. This resulted in an application for an amended scheme together with a revised and consolidated Environmental Statement being submitted in December 2018.
- 4.2 The revised application was considered by the Council's Development Control and Regulation Committee in March 2019, and the application was approved subject to conditions and a section 106 legal agreement. Following a legal challenge to this decision from a third party, the Council referred the application back to the Development Control and Regulation Committee for consideration in October 2019. Again, it resolved to grant planning permission, although this permission was never issued because the section 106 was not completed.
- 4.3 In April 2020 West Cumbria Mining made a further revision to the proposal accompanied by changes to the Environmental Statement. This version of the scheme made changes to the proposed processing method which removed the by-product of middlings coal, meaning that all of the mine's production would be a metallurgical coal product. The Environmental Statement also contained more detail and assessment in respect of greenhouse gases and the climate change implications of the proposal.
- 4.4 On 2 October 2020 the Council's Development Control and Regulation Committee resolved to grant planning permission for the revised proposal, subject to conditions and a legal agreement. However, it was not possible to issue this decision due a Holding Direction served by the Secretary of State, and because the s106 still needed to be

finalised.

- 4.5 On 7 December 2020 the Climate Change Committee published its recommendations for the Sixth Carbon Budget. The Council has not formally considered the implications of these recommendations in respect of their impact on the resolution to grant planning permission and is not now intending to do so either, thus leading it to its present stance of neutrality in relation to the application.
- 4.6 The Council was originally intending to refer the application back to the Development Control and Regulation Committee to allow it to consider the implications of the Sixth Carbon Budget recommendations. This was the subject of a decision by the Council's Executive Director, Economy and Infrastructure ("the Executive Director") on 8th February 2021.
- 4.7 On 5th March 2021, before the decision just referred to could be put into effect, WCM filed judicial review proceedings in the Planning Court challenging the lawfulness of the Council's decision to refer the application back to the Development Control and Regulation Committee for reconsideration in the light of the Climate Change Committee's recommendations for the Sixth Carbon Budget.
- 4.8 The Council fully intended to defend those proceedings, but the proceedings were then overtaken by events in the form of the decision of the Secretary of State on 11th March 2021 to call-in the application. The proceedings, which had then become academic, were thereafter swiftly disposed of by being withdrawn by consent.
- 4.9 The Council then turned its mind to how it should approach the inquiry to take place following the call-in. In all the circumstances the Executive Director decided (on 20th April and confirmed on 5th May

2021) that it would not be appropriate to refer the application back to the Development Control and Regulation Committee to consider the implications of the Sixth Carbon Budget recommendations for its previous resolution and that, in the absence of that consideration, the Council's position on the application at the inquiry should be one of strict neutrality. The Council will therefore not be providing witnesses or evidence at the Public Inquiry (save that it will participate in relation to potential conditions to be applied and the s106).

4.10 More detail on the overall timeline of the determination process for the application is contained in the Statement of Common Ground.

5.0 Planning Policy and Other Considerations

The Development Plan

5.1 The development site lies entirely within the administrative area of Copeland Borough Council (CBC). Cumbria County Council is the Mineral Planning Authority. The development plan for this application comprises:

- The Cumbria Minerals and Waste Local Plan 2015 - 2030 (CMWLP);
- The Copeland Local Plan 2013-2028 – Core Strategy and Development Management Policies DPD (adopted December 2013) (CLP); and
- The Copeland Local Plan 2013-2028 – Proposals Map and Copeland Local Plan 2001-2016 'Saved' Policies (June 2015).

5.2 The Council considers the principal relevant policies of the CMWLP to be the following:

Cumbria Minerals and Waste Local Plan (2015-2030):

SP1 Presumption in favour of sustainable development

SP13 Climate change;

SP14 Economic benefits;

SP15 Environmental assets;

SP16 Restoration and aftercare;

DC1 Traffic and transport;

DC2 General criteria;

DC3 Noise;

DC5 Dust;

DC6 Cumulative environmental impacts;

DC13 Criteria for energy minerals;

DC16 Biodiversity and geodiversity;
DC17 Historic environment;
DC18 Landscape and visual;
DC19 Flood risk;
DC20 The water environment;
DC21 Protection of soil resources; and
DC22 Restoration and aftercare.

5.3 Policy DC13 (Criteria for energy minerals) of the Cumbria Minerals and Waste Local Plan is the key policy in assessing the overall acceptability of the development. This policy states:

Planning applications for coal extraction will only be granted where;

- the proposal would not have any unacceptable social or environmental impacts; or, if not
- it can be made so by planning conditions or obligations; or, if not
- it provides national, local or community benefits which clearly outweigh the likely impacts to justify the grant of planning permission.

5.4 For underground coal mining, potential impacts to be considered and mitigated for will include the effects of subsidence including: the potential hazard of old mine workings; the treatment and pumping of underground water; monitoring and preventative measures for potential gas emissions; and the disposal of colliery spoil. Provision of sustainable transport will be encouraged, as will Coal Mine Methane capture and utilisation.

5.5 Policy DC13 is largely similar to, but not entirely the same as, the NPPF and instead refers to an assessment of whether the proposal

has any unacceptable environmental or social impacts, whereas paragraph 211 of the NPPF only refers to environmental acceptability.

5.6 Policy SP14 states that proposals for new minerals developments should demonstrate how they would realise their potential to provide economic benefit, including measures such as the jobs created and the support given to other industries and developments. Relevant adverse impacts will be weighed against the overall economic benefit.

5.7 Policy SP15 of the Cumbria Minerals and Waste Local Plan is important in assessing the overall acceptability of the development and sets out a number of requirements. In particular, developments should:

- Protect and enhance quality of life and the natural, historic and other distinctive features that contribute to the environment of Cumbria and its landscape;
- Conserve the settings of these environmental assets;
- Improve linkages between assets and provide buffer zones where appropriate;
- Realise opportunities for expanding and increasing environmental resources, including adapting and mitigating for climate change;
- Help secure movement from net loss of biodiversity towards achievement of net gains;
- Help secure new green infrastructure, and to conserve and manage where it is existing, and enhance its functionality, quality, connectivity and accessibility.

5.8 Policy SP16 requires that the restoration and aftercare proposals for mineral sites should demonstrate that best practicable measures have been taken to help deliver the sustainability objectives of the Plan. This policy requires consideration of, where appropriate, the

potential for biodiversity, geodiversity and landscape enhancement, flood risk mitigation and water quality, maintaining agricultural land quality, ameliorating contaminated land and securing land stability.

5.9 Policy DC2 is the overarching development management policy, which requires minerals proposals to demonstrate that appropriate assessments have been undertaken to address potential impacts on the natural and historic environment or human health. Proposals should not give rise to significant adverse impacts upon local air quality, not adversely affect public rights of way, show that the carbon footprint has been minimised and address issues of ground stability (including mining subsidence).

5.10 The CMWLP contains policy on coal mining and refers to coal as an energy mineral due to its historical uses but mentions the WCM proposals for coking coal extraction as “currently being developed”. The plan states within paragraph 5.98 that the key issues with deep mining proposals would be the siting of surface facilities, transport and other infrastructure, disposal of colliery spoil, as well as the associated impacts on populations, landscape and the natural environment.

5.11 The CMWLP does not contain any strategic allocations for coal extraction but paragraph 5.104 states that it is appropriate to consider all applications on their merits, and in the light of detailed proposals. Policies DC13 (Criteria for energy minerals) and DC15 (Minerals safeguarding) are highlighted as particularly relevant.

Copeland Local Plan (2013-2028)

5.12 The former Marchon site is brownfield land and is designated as an Employment Opportunity Site within the Copeland Local Plan

5.13 The Council considers the principal relevant policies of the CLP to be

the following:

ST1 Strategic Development Principles;
ST2 Spatial Development Strategy;
ST3 Strategic Development Priorities;
ST4 Providing Infrastructure;
ER10 Renaissance through Tourism;
ER11 Developing Enterprise and Skills;
ENV1 Flood Risk and Risk Management;
ENV2 Coastal Management
ENV3 Biodiversity and Geodiversity;
ENV4 Heritage Assets;
ENV5 Protecting and Enhancing the Borough's Landscapes;
ENV6 Access to the Countryside;
DM3 Safeguarding Employment Areas;
DM10 Achieving Quality of Space;
DM11 Sustainable Development Standards;
DM24 Development Proposals and Flood Risk;
DM25 Protecting Nature Conservation Sites, Habitats and Species;
DM26 Landscaping; and
DM27 Built Heritage and Archaeology.

5.14 Copeland Local Plan 2013-2028 Proposals Map. The route of the conveyor, and the site of the rail loading facility are designated as countryside with the exception of the Main Band colliery site. Main Band colliery is still to be required to be restored under planning permission 4/88/0064, but this has not been possible to secure to date.

5.15 The Copeland Local Plan 2013-2028 is currently being reviewed. The Council has produced and consulted upon an Issues and Options document. The purpose of the document is to identify key topics

which would be taken forward into a further consultation based upon Preferred Options, the consultation on which has been delayed due to the current situation with Covid-19.

- 5.16 The West Whitehaven SPD (Issues and Options) identifies a number of potential development options for the Marchon site including mixed use development related to the Energy Coast, renewable energy and temporary housing associated with future nuclear developments.
- 5.17 The West Whitehaven SPD Issues and Options Consultation Report (CBC, November 2012) is also a material consideration. However, since it appears not to have been progressed further, it will carry very limited weight.

The National Planning Policy Framework and other considerations

- 5.18 The National Planning Policy Framework (NPPF) published in February 2019 and its associated Planning Practice Guidance (PPG) is a significant material consideration.
- 5.19 When determining planning applications for mineral extraction the NPPF paragraph 205 states that great weight should be given to the benefits of mineral extraction, including to the economy. However, the NPPF makes it clear that the policy of affording great weight to the benefits of mineral extraction, including those to the economy, does not apply to proposals for the extraction of coal and instead the policy at paragraph 211 of the NPPF applies.
- 5.20 Paragraph 211 of the NPPF is effectively a two stage test and states that planning permission should not be given for the extraction of coal unless the proposal is environmentally acceptable, or can be made so by planning conditions or obligations, or if not, it provides national, local or community benefits which clearly outweigh the likely impacts (taking all relevant matters into account, including any

residual environmental impacts).

- 5.21 The NPPF states at paragraph 209(d) that minerals planning authorities should indicate any areas where coal extraction and the disposal of colliery spoil may be acceptable. The CMWLP refers to the WCM proposals and identifies coal as an important strategic resource which requires safeguarding. The plan states that rather than making a strategic allocation policy defining “acceptable areas” for coal extraction, the planning authority considers such developments would be best considered on their own merits using relevant development plan policies.
- 5.22 The NPPF Glossary Annex 2 also defines coal as a mineral resource of local and national importance, necessary to meet society’s needs.
- 5.23 The NPPF’s policy (chapter 17) on meeting the challenge of climate change and other climate change policy and legislation are also relevant considerations.

6.0 The Council's stance as at 2nd October 2020

- 6.1 At the time of the Development Control and Regulation Committee on 2nd October 2020, the Council's stance was that planning permission should be granted.
- 6.2 The Council considered there was a clear policy presumption against the extraction of coal, whether or not it is used for steel making, and that the key tests to consider were those in CMWLP policy DC13 and in paragraph 211 of the NPPF.
- 6.3 The Council considered that, whilst the proposal had unacceptable environmental impacts under the tests of the above policy and paragraph, it provided national, local or community benefits which clearly outweighed the likely impacts, meaning planning permission should be granted.
- 6.4 In coming to this view the Council relied on the fact that it was necessary to apply a planning condition limiting the life of the proposed mine to the end of 2049 (as opposed to the 2070 end date which is applied for).

7.0 The Council's case

7.1 Notwithstanding the above (which is set out only to record the past position), the Council now maintains a neutral stance in respect of the application. The Council will not be calling any witnesses or providing any evidence at the Inquiry, however, it will participate in any discussion with respect to planning conditions/obligations.

7.2 The conditions which the Council considered appropriate were appended to the report for Development Control and Regulation Committee of 2nd October 2020, as amended by the update report. Agreement had been also reached with WCM on the content of a section 106 agreement in February 2021 which, in the event, was never finalised. Should the Secretary of State decide to grant planning permission, the Council's preferred conditions and the section 106 wording are **appended to the Statement of Common Ground**.

8.0 List of Documents

8.1 The Council does not intend to rely on any documents, maps and plans over and above the information already provided to PINS. An agreed list of the application documents is contained in the Statement of Common Ground.

9.0 Witnesses

9.1 The council intends to designate a planning officer to participate as its representative at the session in respect of proposed planning conditions and obligations.