



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

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

## **CASE MANAGEMENT CONFERENCE (CMC) SUMMARY NOTE**

1. The Parties were represented at the conference by the following persons:

Applicant:

- Gregory Jones QC
- Kamran Hyder, Partner, Ward Hadaway LLP
- Caroline Leatherdale, West Cumbria Mining Limited
- Mark Kirkbride, CEO, West Cumbria Mining Limited
- Kevin Murphy, West Cumbria Mining Limited

Council:

- Christopher Katkowski QC
- Alan Evans
- Erin Shearer, Cumbria County Council
- Kate Turner, Cumbria County Council

Friends of the Earth (FoE):

- Alex Shattock of Counsel

South Lakes Action Against Climate Change (SLACC):

- Estelle Dahon of Counsel
- Matthew McFeeley
- Maggie Mason

## **The Inquiry**

2. The Inquiry will open at 10.00 on **Tuesday 7 September**, resuming at 10.00 on subsequent sitting days unless otherwise agreed during the event. At this stage, it will proceed as a virtual event using the Microsoft Teams platform, hosted by the Planning Inspectorate (PINS).
3. There is no technological barrier to taking part in a virtual inquiry and there should be no reason why parties cannot participate fully in the process, albeit that it may look and feel different to what some participants are used to, shorter sitting sessions being an example of an adaptation necessary to make the event work in a virtual environment. Support and some online training can be accessed through the following link:

<https://support.office.com/en-us/teams>

4. The Inquiry will be run on the same lines as a face to face event, adopting the same protocols and etiquette as are normal in the Inquiry room. At this stage, the Inquiry is scheduled to sit for 16 days and this will be reviewed when a more detailed Inquiry Programme is prepared. However, the participants in the CMC confirmed that 16 days seemed a reasonable time in which to conclude the Inquiry.
5. 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 PINS. Whilst unlikely at this stage, if the possibility of a blended event may be possible then the Council will be expected to make arrangements for an appropriate and accessible suitable venue.
6. Should Government Guidance and PINS Operating Model suggest that a blended event may be possible then at that time the views of the Applicant, Council and Rule 6 Parties will be canvassed in writing. However, the default position at this stage is that the Inquiry will be a virtual event.
7. The Council is encouraged to draw the attention of third parties to this Note, including posting a copy on its website.

### **Advocates during the Inquiry**

8. Confirmed as follows:
  - Applicant: Gregory Jones QC
  - Cumbria County Council: Christopher Katkowski QC
  - FoE: Paul Brown QC
  - SLACC: Estelle Dahon of Counsel

### **Main Issues**

9. The Secretary of State wishes to be informed on the following matters for the purposes of his consideration of the application. These are:-
  - 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.

10. 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.
11. With regard to part d) of the call-in letter concerning 'any other matters that the Inspector considers relevant', The CMC confirmed 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. This will include the consideration of alternative technology for the steel industry.
  - 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.
12. The Inspector will issue a Pre-Inquiry Note (PIN) in the next few weeks and as soon as the representations, the SoCG and key issues have been considered in more detail. 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. Therefore, at this stage, the other matters that are mentioned above are not exhaustive.
13. There are a number of other issues raised by interested parties. Whether any of these matters are dealt with as main issues in the eventual decision will depend on whether, in light of the evidence submitted to and heard at the Inquiry in due course, they are determinative in relation to the Inspector's decision.

#### **How the issues will be dealt with**

14. It was agreed that there may be some matters that would be well suited to round table sessions (RTS) rather than cross-examination, and/or a topic based approach to hearing evidence, all of which will help shorten the Inquiry process by reducing repetition and allowing a more efficient programming of witnesses.
15. Evidence will be dealt with on a topic by topic basis. However, in addition to the usual RTS on conditions and obligations, the Inspector considers that the issues relating to character and appearance (subject to a Scott Schedule of key visual and landscape impacts), the effect on heritage assets, the effects on biodiversity and the effects on tourism and recreation could be dealt with by separate topic based RTS discussions to include any interested parties.

16. It was noted that they may be some reluctance to the consideration of matters relating to character and appearance by RTS. At this stage the Inspector would wish to reserve his position on the most appropriate means to consider this matter until as such time as more evidence and a Statement of Common Ground (SoCG) is prepared.
17. The Applicant will take the lead on preparing the topic specific Statements of Common Ground, liaising with the Council and other bodies as appropriate. Whilst identifying areas of agreement, the statements will need to focus on the areas where there is no agreement. The Inspector will lead the RTSs. Parties will work with each other to produce a draft agenda for each session, which will need to be submitted a couple of weeks before the Inquiry. The Inspector will issue finalised agendas based on those shortly before the Inquiry opens. Those agendas will help keep the discussion focussed on the most relevant matters.
18. Matters relating to the need for the coal; the extent to which the proposed development is consistent with Government policies for facilitating the sustainable use of minerals in the NPPF; 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; the effects of the proposed development on employment and the local and national economy and the extent to which the proposed development is consistent with the development plan for the area will be dealt with by presenting evidence in chief.
19. Following the formal confirmation of the issues that will be set out in the PIN, the Inspector will ask the parties for the names of witnesses who will be participating in the Inquiry and submitting proofs.

### **Main Statement of Common Ground**

20. No signed statement of common ground has yet been submitted as required by the Rules. Whilst the Inspector is in receipt of the latest draft of the main SoCG provided on 1<sup>st</sup> June 2021, it was not possible to determine in the CMC whether this draft is capable of being signed and agreed. However, the Inspector stressed the need to ensure the main parties work collaboratively on this, particularly with regard to those issues that clearly could not have changed since the Planning Meeting of 2 October 2020. In this regard a signed SoCG is required as soon as possible.
21. The applicant confirmed the intention to prepare SoCG with the Rule 6 Parties and in respect of topic-based matters wherever possible.

### **Planning Obligation**

22. The final agreed draft to be submitted by **10 August** together with the CIL compliance statement as set out in the Inspector's pre-CMC Note.
23. If possible, the planning obligation should be completed before the close of the Inquiry.

## Conditions

24. An agreed schedule of suggested planning conditions and the reasons for them must also be submitted at the same time as the proofs **(10 August)**. The Council is to submit an *agreed* schedule and the reasons for the conditions, including references to any policy support.
25. Careful attention will need to be paid to the wording of the suggested conditions and they will need to be properly justified having regard to the tests for conditions and in particular the test for necessity. They should not just be cut and pasted from the Officer's Report without proper assessment as to whether each meets the relevant tests.
26. The main parties are also reminded, as set out in the National Planning Policy Framework, that planning conditions should be kept to a minimum and that conditions that are required to be discharged before development commences should be avoided unless there is clear justification.
27. Any difference in view on any of the suggested conditions, including suggested wording, should be highlighted in the schedule with a brief explanation given.

## Core Documents/Inquiry Documents

28. The parties will need to discuss and agree a list of Core Documents in advance of preparing proofs of evidence so they can be properly referenced in the proofs. That list is to be co-ordinated by the applicant and must be submitted with the proofs. A template for that list is attached. The Core Documents should comprise **only** those documents to which you will be referring and do not need to include a copy of the National Planning Policy Framework. Any Appeal Decisions and/or legal authorities on which any of you intend to rely will need to be prefaced with a note explaining the relevance of the document to the issues arising in the Inquiry case, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up.
29. All documents forming part of this appeal must be available to all taking part in the Inquiry electronically, including the agreed Core Documents. The Council has agreed to host dedicated webpages containing the Core Documents and relevant Inquiry information. The webpages will also be used for the hosting of any documents submitted during the Inquiry.
30. Notwithstanding the need for dedicated webpages, the Inspector requires a hard copy set of the Core Documents, plus proofs and any rebuttals etc, although where any documents on which it is intended to rely are lengthy, only relevant extracts need to be supplied, as opposed to the whole document. Such extracts should, however, be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text.
31. Historically, hard copies of proofs and core documents would be sent direct to PINS for subsequent forwarding to the Inspector. Given the current issues with Covid 19 it is not possible for such large documents to be posted direct to PINS, although this may change before the Inquiry opens. The Council agreed to take the lead on collating all of the

relevant proofs and core documents and making these available for collection from a suitable Council premises on or shortly after **17 August**. In this regard, the relevant Council Officer will liaise with the PINS case officer, Liz Humphrey, regarding the arrangements for the collection of the hard copies.

32. It is expected that all necessary documents will be submitted in advance of the Inquiry. Any necessary additional documents can only be handed up to the Inquiry with the Inspector's permission. If accepted, these should be forward to the PINS case officer for forwarding to the Inspector. The Council will provide administrative support to ensure that such documents are speedily placed on the Inquiry webpages from where they will be available to all parties.

## **EIA**

33. The submitted EIA have been considered by the PINS Environmental Services Team whose role is to undertake an adequacy check of the ES against the requirements of Schedule 4 Part 2 of the TCPA EIA Regulations 2011 (which continue to apply to this application, by means of the transitional provisions set out in the TCPA EIA Regulations 2017).
34. Initial review of the ES has brought to light a number of matters which the applicant will need to formally address by means of an addendum or update to the ES. These matters are as follows:

### **Recommendations for Sixth Carbon Budget**

The Climate Change Committee's recommendations for the Sixth Carbon Budget were published in December 2020. The applicant's Greenhouse Gas Emissions assessment (ES Chapter 19) (provided in the ES Addendum, April 2020) is based on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> carbon budgets. The operational life of the proposed development would extend into the Sixth Carbon Budget period (2033-2037). Therefore, an update to the Greenhouse Gas Emissions assessment will need to be provided, taking into account any time periods for any formal public notification, which considers the recommendations for the Sixth Carbon Budget. PINS will formally issue a Regulation 25 Notice for this assessment to be undertaken.

### **Reptiles**

An updated Phase 1 habitat survey completed was in March 2020 (provided with the ES Addendum in April 2020) explains that a small reptile population has now been confirmed in the north of the Main Mine Site and that "robust mitigation measures" would be implemented, to ensure this population is safeguarded during the construction phase of the development. The ES is not clear what robust mitigation would entail. Therefore, consideration is necessary of whether any further surveys for reptiles are necessary; provision of an update note to the impact assessment for reptiles, including the conclusions; the identification in an update/addendum of nature, extent and timing of mitigation; whether a receptor site would be required and whether there would be a need for any additional land for this?

### **Site area**

There is an apparent discrepancy in the size of the onshore mining area, as described in the 2018 ES – Chapter 5 states this area is 302ha in

size, while Chapter 1 states 187ha. The correct site area needs to be confirmed.

### **Cumulative effects**

The Council is to advise the applicant of any new development that has come forward (subsequent to the cumulative effects assessment presented in the ES) which needs to be assessed cumulatively with the proposed development. Appropriate updates/revisions to the ES will be required should any cumulative effects need to be reconsidered.

### **Traffic modelling**

Traffic modelling was based on the year 2019 as 'peak construction'. A new peak construction period will need to be identified and traffic reprofiled taking into account any new development that needs to be factored into the traffic modelling.

### **Virtual Inquiries**

35. Undertaking the Inquiry as a virtual event can necessitate shorter sitting sessions in the interest of health and safety. Sessions on each sitting day are likely to be no longer than around 1.5 hours maximum, with breaks in between, plus a lunch adjournment
36. Bearing in mind the virtual nature of the event, the advocates are expected to work collaboratively on the time estimates for each stage of their respective cases, with final timings for openings and closings, evidence in chief and cross-examination, to be submitted no later than **23 August**.

### **Inquiry Running Order**

37. In general, the Inquiry is expected to finish each day no later than around 17.00 hours.
38. Following the Inspector's opening comments on the first day of the Inquiry, he will invite opening statements from the parties - the applicant first, followed by the Council (to explain their position of neutral stance and role/assistance in the Inquiry) followed by FoE and SLACC. This will help everyone to understand the main arguments of respective cases and set the scene. Those opening statements should each be no longer than 15 minutes in length. I will require written copies of these in advance of the opening submissions.
39. A dedicated slot for third party representations will be provided in the Inquiry Programme. However, after the opening statements the Inquiry will then hear from any local residents (interested parties) who may wish to speak and who cannot attend the dedicated slot. The Inspector will ask for the names of interested parties who wish to speak during his opening announcements.
40. The Inspector will provide the parties with a draft Inquiry Programme by **6 August 2021**. The draft programme can then be considered by the parties and populated with 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. Responses to the draft programme should be provided by **23 August 2021**. The final programme will be provided by **31 August 2021** and will be set out as part of the Inspectors opening announcements on 7 September 2021.

41. The Inspector has carefully considered the participant order in presenting evidence. In light of the Council's position of not providing any witnesses or evidence relevant to the main issues, the Inspector is of the view that the applicant should present evidence first. This will help to ensure that the proposals are understood and assist Rule 6 Parties and the Inspector in identifying any areas of disagreement and ensure that there is no misunderstanding regarding the nature of the scheme.
42. This is a consistent approach to that adopted for a call-in Inquiry at Highthorn in Northumberland in 2017 (APP/P2935/V/16/3158266) for a development involving surface coal mining. Whilst parties should rely on evidence provided in their respective proofs, the Inspector is mindful of the requirement for fairness and proportionality. Therefore, in the unlikely event that any new evidence is submitted to the Inquiry, the Inspector will ensure that appropriate provision is made for the opposing party to respond. Consequently, the Inspector does not consider that any party will be prejudiced by the applicant providing evidence first in each of the topic areas.
43. Towards the end of the Inquiry Programme, provision will be made for the usual round table discussion on the planning obligation and then conditions. That will be followed by closing submissions, Rule 6 Parties first (FoE and SLACC) followed by the applicant. Closing submissions should set out your respective cases as they stand at the end of the Inquiry and will need to include all relevant references and cross-references where evidence is relied on, for the avoidance of doubt. Preferably, they should be no longer than around 30-40 minutes in length. A copy will need to be provided electronically to PINS prior to your respective presentations.

### **Site visit**

44. The Inspector will undertake an accompanied site visit during the Inquiry. 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**. The Itinerary should also indicate indicative timings for the site visit. The applicant is required to take responsibility for the production of the itinerary.
45. In addition to the formal accompanied site visit to be undertaken during the Inquiry, the Inspector is likely to undertake an informal, discrete and unaccompanied site visit at some point prior to the opening of the Inquiry. This will observe aspects of the site from public vantage points only. In this regard, an unaccompanied site visit plan should be provided also by **10 August** to show key vantage point from publicly accessible land or highways.

### **Efficient use of Inquiry time and administration**

46. The Council agreed to provide a dedicated administrative support officer to provide assistance during the Inquiry to act as a link between the

parties, the Inspector and PINS. Duties, albeit not exclusive, would likely include:

- Assisting in co-ordinating the compilation of core documents.
- Co-ordinating draft Inquiry programme.
- Assisting with the compilation of a list of names of local residents and other interested persons who wish to appear at the Inquiry.
- Keeping records of attendance at the Inquiry.
- Co-ordinating the submission of evidence during the Inquiry.

47. The Council should provide the name and contact details of the nominated support officer to PINS by **30 June 2021**.

### **Proofs of evidence and other statements**

48. Proofs to be submitted no later than 4 weeks before the start of the Inquiry on **10 August 2021**.

49. 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**.

### **Notifications**

50. PINS will provide the wording for the site notice, setting out what is required in the notification letter, including the necessity for parties to register in advance with PINS if they wish to 'attend' or participate in the Inquiry.

51. Inquiry notifications should normally be issued a minimum of 2 weeks in advance of opening. However, given the virtual format of the Inquiry and the need to register in advance, **as much notice as possible should be given to allow interested parties time to consider whether they wish to participate**. The Council must send a copy of the notification letter to the Case Officer, together with a list of all those notified, **at the same time that it is sent out to the parties**, but in any event no later than **17 August 2021**.

## Timetable

30 June	Council to provide name and contact details of Inquiry Support Officer to PINS
6 August	Draft Inquiry Programme provided by Inspector
10 August	Deadline for submission of: <ul style="list-style-type: none"><li>• all proofs</li><li>• suggested planning conditions (Council to lead)</li><li>• core documents list (applicant to lead)</li><li>• final draft planning obligation</li><li>• CIL Compliance Statement (Council to lead)</li></ul>
10 August	Site visit itinerary to be provided to Inspector (applicant to lead)
10 August	Deadline for submission of: <ul style="list-style-type: none"><li>• final draft planning obligation and relevant office copy entries</li><li>• CIL Compliance Statement (Council to lead)</li></ul>
17 August	Hard copies of Core Documents and proofs to be made available for collection (Council to lead).
17 August	Deadline for submission of: <ul style="list-style-type: none"><li>• a copy of the Council's Inquiry notification letter and list of those notified</li></ul>
23 August	Deadline for parties to provide responses to draft Inquiry Programme
24 August	Deadline for the submission of any necessary rebuttal proofs
31 August	Inspector to provide final Inquiry Programme
Tuesday 7 September	Inquiry opens 10.00 am

*Stephen Normington*

INSPECTOR  
14 June 2021

## **Appendix**

### **TEMPLATE FOR CORE DOCUMENTS LIST (adapt headings to suit)**

**CD1      Application Documents and Plans**

1.1  
1.2 etc

**CD2      Additional/Amended Reports and/or Plans submitted after validation**

2.1  
2.2

**CD3      Committee Report and Decision Notice**

3.1      Officer's Report and minute of committee meeting  
3.2      Decision Notice

**CD4      The Development Plan**

4.1  
4.2

**CD5      Emerging Development Plan**

5.1  
5.2

**CD6      Relevant Appeal Decisions\***

6.1  
6.2

**CD7      Relevant Judgements\***

7.1  
7.2

**CD8      Other**

8.1  
8.2

\* Each must be prefaced with a note explaining the relevance of the Decision to the issues arising in the current Inquiry case, together with the propositions relied on, with the relevant paragraphs flagged up.