

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

CO/ /2023

IN THE MATTER OF AN APPLICATION FOR STATUTORY REVIEW

B E T W E E N:

SOUTH LAKELAND ACTION ON CLIMATE CHANGE - TOWARDS TRANSITION

-and-

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) WEST CUMBRIA MINING LIMITED

Claimant

Defendants

STATEMENT OF FACTS AND GROUNDS

[CB/X] means page X of the Claimant’s Claim Bundle

Essential Reading (estimated time for reading 5 hours):

- i. Claimant’s Closing Submissions [CB/538-615]
- ii. Decision Letter (“DL”) [CB/65-122]
- iii. Excerpts from the Inspector’s Report (“IR”) ss. 21 and 22 [CB/306-353]
- iv. Witness Statement of Alan Lovett [CB/44-48]

SUMMARY

1. By the present claim, the Claimant applies for permission to bring a statutory review, under s.288 of the Town and Country Planning Act 1990 (“TCPA 1990”), of the decision of the Secretary of State for Levelling Up, Housing and Communities (“the First Defendant” or “the Secretary of State”) dated 7 December 2022 (“the Decision”) to grant planning permission for (a) new underground metallurgical coal mine and associated development at the former Marchon site, Whitehaven (“the Site”); (b) a coal loading facility and railway sidings linked to the Cumbrian Coast Railway Line and associated development on the land off Mirehouse Road, Pow Beck Valley, and (c) an underground coal conveyor to connect the coal processing buildings with the coal loading facility (“the Proposed Development”).¹

¹ The full description of Second Defendant’s application for permission is set out at DL1 [CB/301].

2. The Claimant is a person aggrieved within the meaning of s.288(1)(a) TCPA 1990 and contends that the Decision should be quashed under s.288(1)(a)(i) as it was legally flawed for the following reasons:
 - a. **Ground 1** – Error of law and/or failure to give intelligible or cogent reasons concerning ‘substitution’. The First Defendant failed to grapple with a principal controversial issue between the parties: the extent of the climate impact of the mine depended on whether there would be ‘perfect substitution’, i.e. whether the coal from the new mine would substitute for coal produced in mines elsewhere on a perfect one-tonne-for-one-tonne basis, leading to an equivalent reduction of coal production elsewhere.
 - b. **Ground 2** – Error of law in discounting the international impact of granting permission; alternatively, failure to give intelligible or cogent reasons concerning this impact. The First Defendant failed to grapple with another principal controversial issue between the parties: the evidence that granting permission for the proposed mine would undermine the UK’s reputation as a global leader on climate change, compromising the UK’s climate diplomacy and leading to reduced global ambition on climate and increased global greenhouse gas emissions.
 - c. **Ground 3** – Errors of law concerning whether ‘downstream emissions’ caused by the mine’s sole product, metallurgical coal, were indirect significant environmental effects of the proposal, arising from a mistaken understanding of the Court of Appeal’s decision in *R(Finch) v Surrey County Council* [2022] EWCA Civ 187 (“*Finch (CA)*”).
 - d. **Ground 4** – Unlawful disparity of treatment of the parties and error concerning the approach to the burden of proof. The First Defendant repeatedly imposed a ‘certainty’ threshold on the Claimant’s evidence and arguments, but applied a lower threshold to the Second Defendant’s evidence and arguments. Further, the Defendant inappropriately imposed on the Claimant the unlawful burden of disproving the Second Defendant’s case.