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The Rt Hon Sajid Javid, MP
Secretary of State for Housing, Communities and Local Government
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Your ref: New Matter

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12 February, 2018

Dear Minister

Bradley Opencast Coalmine, Land Adjacent to the A692 Road, known as Bradley, Near Leadgate, Consett, County Durham, DH8 7SL

We write in relation to the proposed surface mining of coal at the above-referenced site ("Bradley site"), currently controlled by the Banks Group Ltd ("Banks Group"). We represent the Coal Action Network, Pont Valley Network, Derwent Valley Protection Society, Burnopfield Environmental Awareness Movement, as well as twenty-five local residents and business owners.¹

We write to request that you revoke the planning permission for the Bradley opencast coal mine, pursuant to section 100 of the Town and Country Planning Act 1990 ("the Act"). As explained below, this is a case where the original decision to grant planning permission was grossly wrong and the development is likely to damage the wider public interest. In these exceptional circumstances, it is necessary and appropriate for you to exercise your power under s 100 and revoke the permission in accordance with Government policy on the exercise of that power.

Background

The proposed site of the Bradley opencast mine is a greenfield site near Leadgate, County Durham. The Bradley site is composed of 73.9 hectares of mainly agricultural land, marked by field hedges, trees and ponds. A number of public rights of way cross the site. It lies partly within an Area of High Landscape Value and includes the Brooms Pond Local Wildlife Site and part of the West Billingside Meadow Local Wildlife Site (Sites of Nature Conservation Importance). The site lies within 300 metres of residences at Douglas Terrace, including those of residents we represent. The area supports a diversity of wildlife

¹ These are:

and fauna. There are great crested newts, bats, badgers, barn owls, common blue butterfly and red kites on the site as well as a wealth of plants and habitats which support the wildlife. The local community has opposed various applications for opencast coal mining at this site over a period of 36 years.

The application for planning permission for the proposed development here was originally submitted by UK Coal Mining Ltd ("UK Coal") in December 2007. This application was for planning permission to develop a surface coal mine at the Bradley site involving the extraction by surface mining of 520,000 tonnes of coal, of which approximately 75,000 tonnes is expected to be coking coal. Operations would extend over a period of 3 years and 6 months.

Durham County Council ("the Council"), acting as the minerals planning authority, refused permission on 18 February 2011 on the grounds that the community benefits did not outweigh "the unacceptable impact on the environment and amenity of local communities." A Planning Inspector dismissed the appeal on 23 February 2012 [Appeal Ref. APP/X1355/A/11/2150277]. However, by a decision dated 19 July 2013 the appeal decision was quashed by the decision of a Deputy High Court Judge, who found that the Inspector had misunderstood the operation of the presumption against opencast mining in the Durham County Council Minerals Local Plan.

After quashing, a further appeal was heard by a Planning Inspector against the decision of the Council to refuse permission. On 3 June 2015, the Inspector issued a decision ("Inspector's Decision") allowing the appeal and granting planning permission to UK Coal [Same Appeal Ref. as previous decision].

The basis of the Inspector's Decision included the Inspector's judgment that "the projected supply of coal should be taken to represent a national benefit carrying great weight." Inspector's Decision para. 91.

In respect of carbon emissions, the only analysis related to the emissions from the transport of coal. The Inspector's Decision states at para. 94:

"It was contended that the consequences of emissions from coal-fired powered stations on climate change, along with the costs of measures to combat climate change, should be taken into account. I do not agree. This would require quite a convoluted exercise. ..."

Taking into account these and other issues, and despite finding that the proposal was contrary to the Local Development Plan, the Inspector's Decision concluded that the national benefits of the coal supplied by the project outweighed the harm which would be caused to the local community by the mining operations.

Subsequent to the Inspector's Decision, UK Coal entered liquidation in 2015. We are instructed that the community believed that there was no longer a threat of mining at the site after UK Coal announced that it would enter liquidation. However, in early January 2018 Banks Group said that it intends to work the permission granted to UK Coal at Bradley, starting work on an access road in Spring 2018 "with the start of mining operations following soon afterwards", in order to commence work before planning permission expires on 3 June 2018.

Changes in UK need for coal and Government policy since the Inspector's Decision

As explained below, this represents an exceptional case in which it is appropriate to use the powers granted by Section 100 of the Town and Country Planning Act 1990 to revoke planning permission. In particular, the basis upon which the Inspector's Decision was founded, namely the need for domestic supply of coal, is no longer valid. Moreover,

commencement of this new opencast coal mine would run counter to the UK's international commitments and conflict with national policy.

No new coal mines have started since the Government said it would launch a consultation into phasing-out coal by 2025. To start a new one now would undermine the notion that the UK is leading the world away from coal.

UK need for coal

In 2015, when the Inspector's Decision was made, coal generation accounted for 22 percent of UK electricity supply.² In 2016 generation from coal fell by 60 per cent³ to 9 per cent of total generation.⁴ This trend continued in 2017. The latest BEIS quarterly "Energy Trends" document notes that "[b]etween the third quarter of 2016 and the third quarter of 2017 (on a seasonally adjusted and temperature corrected basis) coal consumption fell by 21 per cent driven by decreased coal use in electricity generation."⁵

The Government's Impact Assessment for the phase-out of coal power projects that, even in the absence of the phase-out policy, UK coal plant capacity will fall from 13.8 GW in 2017 to 1.5 GW by 2023.⁶ The Impact Assessment notes that the projected utilisation of steam coal will be correlated with the decline in plant capacity.⁷ This represents a further projected average annual decline of 24% per annum, resulting in a total decline of 89% over the period. By the time coal extraction would begin at the Bradley site, in late 2018 or early 2019, coal generation will likely have fallen by more than 75% from 2015 levels. The basis for the Inspector's Decision, which gave great weight to UK coal supply, is therefore no longer valid.

Government Policy

Government policy has shifted significantly in regards to coal since the Inspector's Decision was issued. In particular, last month the Government announced a policy that would require closure of all coal-fired power stations by 2025.

In addition, the UK Government, along with the Canadian Government, launched the Global Powering Past Coal Alliance in November 2017. The Alliance now boasts membership from more than 20 other countries, along with states, cities and businesses. The Alliance's Declaration which all members, including the UK have adopted notes that:

"The health effects of air pollution from burning coal, including respiratory diseases and premature deaths, impose massive costs in both human and economic terms. Recent analysis has found that more than 800,000 people die each year around the world from the pollution generated by burning coal.

As a result, phasing out traditional coal power is one of the most important steps governments can take to tackle climate change and meet our commitment to keep global temperature increase well below 2°C, and to pursue efforts to limit it to 1.5°C.

...

2 Digest of UK Energy Statistics July 2017, page 14.

3 Ibid Page 11.

4 Ibid Page 14.

5 Dept. For Business, Energy and Industrial Strategy, Energy Trends December 2017, page 7.

6 Dept. For Business, Energy and Industrial Strategy, Impact Assessment: The Future of Coal Generation in Britain para 13 and Fig. 1 (20 November 2017) (note that the projections, as seen in Fig.1, show that the 1.5 GW figure is reached by 2023).

7 Ibid at para 44.

*Countries moving to low-carbon, climate-resilient economies are already seeing environmental, economic and human health benefits. Our coalition wants to help accelerate that transition. Powering Past Coal brings together a diverse range of governments, businesses and organisations that are **united in taking action to accelerate clean growth and climate protection through the rapid phase-out of traditional coal power.***" (emphasis in original).

It is now clear that if the world is to avoid global warming breaching 2 degrees – let alone the 1.5 degree goal adopted at Paris – at least 80% of known fossil fuel reserves must be left unburned.

In the UK context, it is clear from the recent assessment of the Government's Clean Growth Strategy by the Committee on Climate Change, a statutory body, that there remain significant gaps in Government policy that must be filled to meet the fourth and fifth carbon budgets.⁸ Commencement of a new opencast coal mine in this context runs counter to Government policy to accelerate the phase-out of coal power and would undermine the UK's status as an international leader on this issue.

Failure to assess climate impacts

The effects of the proposed mine on climate change were not adequately considered at the planning appeal which approved the Bradley mine. In the Environmental Statement climate change is only mentioned four times and then exclusively when citing government policy. As discussed above, the only analysis of carbon emissions was undertaken in the context of transport of coal, and then only to argue that transport of domestic coal to UK power stations results in fewer emissions than transport from abroad.

Durham County Council did not themselves have regard to climate impacts when considering the application for planning permission. This was not therefore a reason for refusal in February 2011 and consequently did not form part of the Council's case on appeal. This was a gross error. Regard was not had to an important relevant material consideration.

Moreover, the failure to assess the impacts of the development on climate was in contravention of Article 5 and Annex IV of Directive 2011/92/EU, as amended ("the EIA Directive"). The flagrant breach of the requirements of the EIA Directive renders the decision to grant planning permission grossly wrong.

Local Health and Democracy

As discussed above, in early January 2018 Banks Group said that it intends to commence operations at the Bradley site in advance of the expiration of the planning permission in June. However, members of the local community have fought for 36 years against applications at this site. This planning history relating to this application has included two appeals and a High Court judgement.

After the recent announcement from Banks Group the community has effectively been given a mere matter of months to voice their concerns to the company, and no local democratic process remains accessible at this stage.

This is of particular concern because a recent UN report on the UK deplored the lack of access to democratic intervention on the part of communities living with opencast coal mines, as well as collecting reports of the adverse impacts of this mining practice on

⁸ Climate Change Committee, An independent assessment of the UK's Clean Growth Strategy From ambition to action (Jan. 2018) at page 9.

community health.⁹

The Ministry of Housing, Communities and Local Government's job is to 'create great places to live and work, and to give more power to local people to shape what happens in their area'. As such, it is appropriate, right and necessary that you revoke this permission.

Conclusion

In R (Health and Safety Executive) v Wolverhampton City Council [2012] UKSC 34 Lord Carnwath held at [54] that "a public authority faced with a serious threat to public safety within its sphere of responsibility, would find it difficult to defend the rationality of a refusal to act, if the only reason were other demands on its budget." The position here is analogous. The planning permission should be revoked.

What you are requested to do

1. Revoke the planning permission for the Bradley opencast coal mine, pursuant to your powers under section 100 of the Town and Country Planning Act 1990;
2. In any event, and given the mining company's intended time-line for commencement of development at the Bradley site, please reply to us within 21 days, i.e. by 5 March, 2018.

If you require any further information to inform your decision please do not hesitate to contact us.

Yours faithfully

Richard Buxton Environmental + Public Law
Richard Buxton Environmental & Public Law

cc: The Rt Hon Michael Gove, Sec. of State for Environment, Food and Rural Affairs

⁹ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to the United Kingdom of Great Britain and Northern Ireland (5 Sept. 2017) available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session36/layouts/15/WopiFrame.aspx?sourceDoc=/EN/HRBodies/HRC/RegularSessions/Session36/Documents/A_HRC_36_41_Add_1_EN.docx&action=default&DefaultItemOpen=1.