

P-04-472 Make the MTAN Law

Oral submission to Petitions Committee: 14th May 2013

by (Dr.) John Cox

BACKGROUND

On 20th January 2009, Jane Davidson, the then Minister for the Environment, introduced newly published Coal Minerals Technical Advice guidance Notes (MTAN) for Wales, and stated: “.. *the Coal MTAN will fulfil the pledges (in 2008) to introduce Health Impact Assessments for coal applications, together with buffer zones, and with an emphasis on working closely with local communities. It reaffirms the commitment (in 2008) to a 500m buffer zone.*”

In January 2011, Torfaen Council rejected an application to opencast for coal (at Varteg Hill)¹ because, in the opinion of the Council, it conflicted with these MTAN guidelines – notably in that there are houses and a primary school less than 100 metres away². The Applicant lodged an Appeal (held in January 2012) and, in February, we learnt by letter that the Planning Inspector had recommended that the Appeal should be upheld. Meanwhile, the Minister is yet to announce a decision on this application.

This petition is a response from our community and others who had hoped that the MTAN would indeed “*protect communities*” in the way promised³ by the Welsh Government and National Assembly. But the petition does **not** refer to the Planning Application for Varteg Hill that occasioned it. Irrespective of whether the Minister is to rule in favour or against the Appeal or whether this takes place before or after the Petitions Committee reaches its conclusion, the petition is concerned with the long-term and on-going contradiction between:

- 1) Local Authorities being obliged to conform to these MTAN guidelines,
- 2) Planning Inspectors being allowed to reinterpret the MTAN guidelines.

Our petition is focussed on the legislative status of the MTAN Guidelines and does not mention the Varteg Hill situation. It reads:

We call upon the National Assembly for Wales to urge the Welsh Government to make the MTAN Guidance Notes, notably those relating to a 500 metre buffer zone around open cast workings, mandatory in planning law for Wales.

Whilst we are yet to see the Planning Inspector’s report for Varteg Hill and we thus cannot comment on his reasoning, he did reveal during the hearings that he did not feel he was obliged to conform to the MTAN Guidelines as, in his opinion, these were “policy” aspirations (devised by politicians) and that he only had to take account of “planning law” (as had been interpreted by professionals such as himself).

He also stated that he considered he had authority to interpret the Guidelines as he thought they should have been worded. On one occasion, he even suggested that a paragraph had been “wrongly referenced” – although, in this specific instance, even the Counsel for the Appellant disagreed with his interpretation.

We doubt whether anyone anticipated that an Inspector might imagine he had the authority to dismiss a decision of a Local Authority based on his personal views of what should have been decided by the National Assembly. The petitioners believe that Planning Inspectors are servants of the process and as equally obliged as are the Local Authorities to conform with the MTAN Guidelines.

RESPONSIBILITIES OF THE PLANNING AUTHORITY

The First Minister has stated without equivocation that “*it is a matter for the local planning authority to determine what it does in its own area.*”⁴ He quite clearly did not anticipate that a Planning Inspector might selectively interpret the Guidelines that were agreed after 10 years of public consultation and endorsed unanimously by the Assembly Members. In reply to William Graham in April 2010, the First Minister stated that ‘*planning guidance is there to be observed*’.

In view of this context, Torfaen County Borough Council believed it had no option but to refuse the Varteg Hill application. If the Planning Inspectors are not also obliged to conform to these rules, the costs to Torfaen Council (and others in future) could run into £millions in lost Appeals and the MTAN will be worthless.

THIS ORAL SUBMISSION

For this evidence-gathering session of the Petitions Committee, we have two speakers available to answer your questions about our petition and all the associated issues arising.

Lynne Neagle is the Assembly Member for Torfaen and took part in the discussions in the National Assembly that led to the adoption of the MTAN Guidelines. She has been closely involved in the many discussions that have taken place in relation to the Varteg Hill proposal and is well-placed to explain the expectations of her constituents and their dismay if the MTAN Guidelines are not respected.

John Cox chairs a local residents committee and on their behalf submitted objections to the Varteg Hill application for the determination meeting of Torfaen Council and at the Appeal. This submission was not challenged at either hearing – which, in legal / quasi-legal proceedings, normally should mean that a submission has been accepted.

FOOTNOTES (for the information of the Petitions Committee)

¹ Excerpts from Torfaen Council’s rejection of the Application (emphases added)

“The main thrust of Welsh Assembly Government guidance on coal working is reflected within MTAN2. It appears that, unless there are exceptional circumstances, the Welsh Assembly Government’s position is that the 500m separation distance referred to strikes the correct balance between protecting the amenity of local people in the community, on the one hand, and society’s need for coal on the other. The application as amended, has sought to divorce the coal extraction area by 200m from the residential properties and by so doing claim that they are complying with the statement in the MTAN2 that working area should not come within 200m of a settlement, this argument is considered to be flawed and the reduction in the coal extraction area cannot be logically claimed to comply with the guidance contained in the MTAN2 when the proposal still has **major work within 200m of residential properties** namely the construction and removal of the eastern overburden dump and baffle mound.

“From the comments of the Councils Environmental Health Officer it is considered that the construction and removal of the bund would create noise and dust problems that would be detrimental to the amenities of those residents in the vicinity of the site, particularly Pembroke Place, Pembroke Terrace and Salisbury Terrace. **The Environmental Statement (ES) recognises that the noise levels would exceed the maximum levels recommended in MTAN2.**

“If the Council were to accept the flawed logic of the argument that the amended plan complied with the MTAN2 guidance, in that there was no working within 200m of the settlement, the proposal would still need to be considered against the general presumption of against coal working within 500m of a settlement unless there is justification in terms of exceptional circumstances as laid out in the MTAN2. It is considered that the benefits in terms of landscape, safety and regeneration are, at best, marginal. In order to recommend approval for an application in such close proximity to residential properties there would have to be clear, substantial and proven benefits. **It is considered that no overriding significant benefits would arise from the proposal which would justify its approval as such benefits do not exist.**

“In addition the application presents the scheme as the only method of dealing with the legacy of the previous coal workings, however it is considered that the ES does not present any quantifiable analysis with regard to the costing of the scheme put forward or any alternative schemes that may deal with the legacy of the previous coal mining operations affecting the site.

“IT IS RECOMMENDED: Refuse for the following reason(s):

“Given the site’s proximity to residential properties, the nature, scale and duration of the operations proposed would give rise to unacceptable impacts upon the amenities of local residents in relation to noise and dust. The proposal is therefore considered to be in conflict with Policy M1 of the Adopted Gwent Structure Plan and furthermore there are no exceptional circumstances presented in the application, of sufficient weight, which would override the general policy presumption in Minerals Technical Advice Note 2: Coal that surface working of coal should not occur within 500m of a settlement.”

² Distances are measured “boundary to boundary” - as specified in the MTAN paragraphs 29, 30, 32, 40 and 49-51, <http://wales.gov.uk/docs/desh/policy/090120coalmtanen.pdf> Paragraph 51 requires the applicant to provide supporting evidence to justify anything other than boundary-to-boundary measurements – which was not done in this case.

³ First Minister in answer to Lynne Neagle AM, 6th March 2013,

⁴ First Minister in answer to Bethan Jenkins AM, 6th March 2013.