P-04-472 Make the MTAN Law – Correspondence from the Petitioner to the Clerking Team, 10.02.2014

Evidence session on the 'Make the MTAN Law' Petition
Tuesday 18 February 2014

This submission is from the lead petitioner, Dr John Cox, after having read the written submission provided by the Minister for Housing and Regeneration prior to his oral submission, currently scheduled for 18th February 2014.

1 The Minister's submission seems to have been written without reading the evidence presented by the petitioners in May 2013. As lead petitioner, I would prefer the Minister to first read and see our evidence before he appears before the committee – even if this necessitates yet another postponement. To assist the Minister, I include cross-references to the transcript paragraphs §180-227.

2 In any event, I believe it is appropriate to repeat several points made 9 months ago - to which we have had no response. Although the Minister outlines how planning is meant to proceed, he has not addressed any of the problems we have experienced. *(Note: as in May, we do not seek to influence any current or previous Planning Application. What we do seek is that the Minister reviews how the process is operating in practice and what may be done to ensure that all participants in the planning process are singing from the same hymn sheet.)*

3 As will be clear from reading our actual evidence, we did <u>not</u> advocate a rigid incorporation of the MTAN2 into law (notably see §194, 195, 209). Although many of us fail to see why this is considered so unthinkable, the lead petitioners argued that our difficulties are because MTAN2 policy guidelines have been misinterpreted and there seems to be no mechanism to ensure that Planning Inspectors do not wilfully misinterpret the well-considered objectives of the MTAN2 policy guidelines.

4 In answer to written questions, the First Minister unequivocally stated that the MTAN2 Guidelines are "there to be obeyed" (by Local Authorities). This led Torfaen County Borough Council to reject the Varteg Hill application - by virtue of its gross violation of the MTAN Policy Guidelines (by a factor calculated to exceed 1000 – a calculation not challenged either by the Inspector or by the Applicant at the Appeal). Faced with this reality, the Applicant argued instead at the Appeal that the Guidelines should be ignored (by the Inspector – not the Local Authority) as they were "only guidelines". The Inspector, in a withering remark concurred, saying that the MTAN policy guidelines were "merely the aspirations of politicians, not law".

5 As we argued before the committee in May, this must lead to a situation where Council after Council will reject coal opencasting applications that clearly violate the MTAN2 policy guidelines whilst Planning Inspector after Planning Inspector could uphold Appeals - at

enormous cost to the public purse and prolonged worry for those living nearby. The only beneficiaries of this situation are the legal profession.

6 It may be argued that a Planning Inspector is a neutral arbitrator giving an impartial professional opinion on a matter with which he has extensive expertise. We dealt with both points in our evidence (for example, §212) and I will do so again now.

7 On the latter point, it is simply not true that any presumed technical expertise of a Planning Inspector is a critical factor. Like a Judge in a Criminal Court, he or she has to come to his or her decision based on the actual evidence that was presented by genuine recognised experts at the Appeal. This process was severely flawed during the Varteg Hill Appeal because the Planning Inspector made no distinction between genuine professional "experts" and those who were simply there and paid to make statements to support the Applicant.

8 I anticipate there will be concern at my suggesting that a Planning Inspector might not be neutral. I make this statement (in respect to Varteg Hill) not from my displeasure at his conclusions but from the prejudicial manner of presentation. As is normal for such Reports, he listed all the submissions received and included many paragraphs explaining his assessments. In view of the many pages devoted to this, readers may be expected to assume that the Planning Inspector thoroughly evaluated all the submitted objections before he reached his opinion. But he did not.

9 What is striking about this Inspector's report is that he deals with all but one of the objections raised at the Appeal – the sole omission being a presentation made about the interpretation of the MTAN2 Guidelines - previously to Torfaen and latterly at the Appeal hearings. Not one of its contentions was queried at the Appeal by either the Applicant or by the Inspector and not one argument appears in the Report to the Minister even to mention that a submission on this central issue had been made!

10 To further mislead the Minister (as must have been the intention), the Report refers to *"coaling"* being 200 metres from the nearest settlement rather than – as is specified in the MTAN2 Guidelines - the *"works boundary"* being 60 metres from the nearest settlement. This is not a matter of semantics – the size of the bund for this application was to be 20m high and would have involved 3 months of earthmoving to shift 750,000 CuMs and the same again to remove. What the Inspector has chosen to ignore in his report is any mention of *the major disruption* – focussing instead on the *relatively minor* disruption of the coaling after the quarry had been created.

11 This key issue for the Planning Authorities bears repeating. If the precedent is set that the coaling boundary (as opposed to the operational boundary) is used as the point of reference for measuring

the 200/500 metres, this devalues the protection the MTAN was claimed by the then Minister to provide. The operational activities other than coaling can be as (and for Varteg Hill would have been more) disruptive than the actual coal winning activity. The Inspector spectacularly misinterpreted the MTAN in this respect (even Counsel for the Applicant disagreed with him when he revealed this to be his interpretation of the MTAN during the Appeal hearings).

12 So, on this specific issue, the Planning Inspector reinterpreted the MTAN in full knowledge that it was not the intention of the Guidelines adopted by the National Assembly and Welsh Government. He goes so far as, in Paragraph 308 to move the goalposts "to ensure coal working no nearer than 200 metres from the nearest houses" – a spectacular rewriting of the criteria announced when the MTAN was published.

13 In respect to noise, the Applicant had to admit that even with all the proposed mitigation measures, the level of noise experienced in homes in Pembroke Terrace would exceed acceptable levels for residential properties. What the Applicant argued was that, because they did not have front gardens, they should not be considered as residential and should be treated as if the side of an urban throughway. Here also the Inspector does not mention this issue, simply stating his opinion that the noise levels were acceptable – ignoring the class-prejudice inherent in such a contention (§192).

14 The key issue for us (and Torfaen Council) is that the criteria laid down in the MTAN2 Policy Guidelines should be taken seriously and that all participants in the planning process, <u>including the Planning Inspectors</u>, agree the same interpretation as emerged from the planning consultation spanning 10 years. I submit that no individual - whatever their experience and position – has or should be given authority to rewrite the well-considered conclusions of a ten-year democratic consultation process.