P-04-472 Make the MTAN law – Correspondence from the Petitioner to the Clerking Team, 23.06.14.

Dear Kayleigh,

Thank you for this opportunity to comment on the "Make the MTAN law!" item on your agenda for 1st July 2014.

I believe that the views of the petitioners were comprehensively addressed in my submissions of 18th and 27th February 2014 (again attached for circulation to the committee) and I submit that, as the Minister has not responded to a single one of the specific points made then, these submissions are as valid for this upcoming meeting as they were in February.

What the Minister is now saying, in his most recent letter, is that he is not prepared to comment on any application that is live, dead or merely a gleam in the eye of the applicant – and, moreover, that he does not wish the Planning Inspectorate to answer any questions on these matters, whether or not such questions relate to specific planning applications (also whether live, dead or hypothetical).

I have three points to make in response to his extraordinary letter:

1) If this is genuinely a government ruling, why did the Minister waste the time of the Petitions Committee by several times postponing his appearance before the committee from July of 2013 until February 2014 on the pretext that he would have to answer questions about the then undetermined Varteg Hill application (not, let me remind the committee, even mentioned in the petition)? If non-cooperation was Departmental policy in May 2013, they should have said so then and the issue could have been concluded many months ago.

2) Are we to infer from this that there is no mechanism for the National Assembly to assess if the MTAN 2 Guidelines are achieving their purpose and that, somewhere/sometime, the National Assembly decided that this specific

Ministry and its staff cannot be subjected to scrutiny? Could we have chapter and verse for this decision to exempt this Ministry from meaningful scrutiny?

3) I presume that the Minister does not dispute that the MTAN 2 Guidelines envisage a 500m buffer zone between "settlements" and the "site boundary" of a coal coaling application (other than for specifically designed exceptional circumstances) and is aware that, during the consultation and at its conclusion, an alternative (favoured by the coaling companies) of a 200m buffer zone between the settlements and the coaling boundary was specifically debated and rejected. Whilst the MTAN 2 are clearly defined as Guidelines (for Local Authorities to obey and the Planning Inspectors to take into account), surely it must be the case that any option categorically rejected by the consultation and the National Assembly, cannot be reinstated unilaterally by the Planning Inspectors?

I hope these thoughts will be of assistance to the Petitions Committee. Might it be appropriate that the Petitions Committee seek a Plenary Debate to enable the National Assembly simply to reconfirm its wish that the MTAN 2 Guidelines, that were unanimously approved by the National Assembly, should except in exceptional circumstances be adhered to by everyone involved in the planning process?

Sincerely.

John Cox (Dr)

William Powell AM
Chair, Petitions Committee,
National Assembly.

27 February 2014

Dear William,

Make the MTAN law ! petition

I listened with concern to the "evidence" session with the Minister at your last meeting and I have spoken at length with Steven since. I write now to confirm that I fear the Minister's negative attitude calls into question whether there is any value in anyone presenting a petition on this topic in future.

I deduce, from the Minister's written submission and the proceedings, that he and his Advisors did not read the evidence presented last May or, if they had done so, they decided to not acknowledge that they had done so. Their official excuse for their non-response to our submissions is that they claim they may not refer to "specifics" – even the specifics of planning applications that are now dead and buried history.

The first point to be said about this is that, supposing for the sake of argument that this excuse is 100% valid, this means that the Minister could have answered the same questions in July – instead of postponing this non-event, pending his decision on the Varteg Hill planning appeal. This was a gross discourtesy to the committee and has prevented consideration of the petition for over six months.

A more plausible scenario is that his excuses from July to the February had validity and it is only this latest excuse that is false, dreamt up specifically to avoid answering anything arising from the now dead Varteg Hill appeal. I suggest that your committee ask the Minister to produce the legal advice he received that justifies his refusal to refer to the lessons from this or any other past planning application.

In any event, the Minister made no reference whatsoever to the submissions made by Lynne Neagle AM and myself in May. In our submissions we had made it clear that we were not asking for planning law to be changed – what we did ask, and repeated several times in several ways, was that all persons involved in the planning process should "sing from the same hymn sheet".

Given all these references (paragraphs §194, 195, 199, 200, 208, 211, 212, 214, 220, 225, 226), it is disingenuous of the Minister to suggest that we were asking for a change in the law rather than, as the transcript demonstrates, implementation of the existing law. I prefer to believe that he was misinformed by his Advisors on this.

I reiterated all these points in the written supplementary I made after reading the Minister's written submission to your committee – but clearly this also was not seen by the Minister. The point we have made throughout is that the MTAN policy guidelines – whether treated as policy or guidelines or both – should be given equal weight by all organisations and people, including the Planning Inspectors.

I suggest that the next step for the committee should be to invite the Planning Inspectorate to appear before the committee to answer the questions not answered by the Minister. Would that be feasible?

Sincerely,

John Cox (Dr.)
Lead Petitioner

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 not 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, including the Planning Inspectors, 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.