

Application to the Aarhus Convention Compliance Committee

ALYSON AUSTIN

Communicant

and

UNITED KINGDOM

Member State

CHRONOLOGY OF ACTIVITY RELATING TO FFOS-Y-FRAN OPENCAST COAL MINE

The purpose of this chronology is to summarise the various decisions acts and/or omissions relating to the Ffos-y-fran opencast coal mine in South Wales and with a view to provide an open account of matters relating to the proposal. It does not attempt to explain detailed matters between the Communicant and either the Member State or the opencast operator which are discussed further in the detailed submissions. However, it is hoped that it is useful and accurate summary document.

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| Jan 01 | Application for land reclamation and opencast coal extraction at Ffos-y-fran, Merthyr Tydfil, South Wales refused. The Inspector found that the “risk to public safety at present appears slight ...” and concluded that: “... I see that coal extraction is the operational means chosen to achieve the reclamation and in that context I believe it is excessive and harmful.” |
| May 03 | Environmental statement (ES) for land reclamation and opencast coal mining prepared on behalf of the opencast operator, Miller Argent (South Wales) Ltd (the operator). |
| 9.5.03 | Operator applies for planning permission with ES in support. |
| Nov 03 | Mrs Alyson Austin (the communicant) and family move into home their home at Bradley Gardens, Merthyr Tydfil. |
| 19.11.03 | Merthyr Tydfil County Borough Council (MTCBC), the local planning authority and environmental regulator, resolved to grant planning permission for land reclamation and opencast coal mining. |
| 1.12.03 | Welsh Government ‘calls in’ the planning application for its own determination. |
| Nov 04 | Planning inquiry on behalf of the Welsh Government into the application for planning permission. |

11.4.05	The Welsh Government grants permission following recommendations by the Planning Inspector.
11.5.05	Planning permission challenged in High Court by a local resident, Elizabeth Condrón.
21.12.05	High Court quashes planning permission on grounds of the apparent bias of the Welsh Planning Minister.
27.11.06	Appeal against High Court decision allowed and planning permission restored.
10.5.07	The operator states that: '... as this was a land reclamation scheme with dereliction going right up to the site boundary it was necessary for the excavations also to go to the site boundary also leaving no room initially to plant trees as a barrier to the working operations.'
23.5.07	House of Lords refuses permission to appeal on the basis that the appeal does not raise an arguable point of law of general public importance.
13.2.08	Legal proceedings issued against MTCBC after declining to enforce a proposed breach of permission. On 15.2.08 the operator conceded it would not excavate up to the site boundary or beyond the original line of excavations.
20.3.08	Permission to move to judicial review refused on paper as premature. Proceedings not renewed in the light of the operator's concession.
18.4.08	Mrs Condrón petitions European Parliament.
Jun 08	Summary noise assessment by Council.
21.10.08	Petition declared admissible by the European Parliament no. 617/2008.
28.10.08	Legal proceedings issued against the failure by MTCBC to undertake an EIA screening opinion required under the EIA Directive 85/337/EEC and to proposal to extend a 23 hectare coal processing plant at Cwmbargoed, Merthyr Tydfil; part of the opencast operations (<i>R (Condrón) v MTCBC & others</i>)
Jan 09	Summary noise assessment by the Council.

- 21.4.09 High Court refuses permission to move to judicial review on grounds of non-compliance with the EIA Directive and failure to undertake an EIA screening opinion.
- 29.7.09 Operator asked to stop dust and noise pollution on behalf of 20 residents including the communicant.
- 29.7.09 The approach of MTCBC in relation to costs and concern of penalising the application in matter *R (Condrón) v MTCBC* (contrary to Art. 3(8) of the Convention referred to UN Compliance Committee (ACCC/2010/40).
- 18.3.10 UN consider communication relating to MTCBC and declare communication is not made out. Following CA judgment of 20.5.10 MTCBC pursues costs of £14,560 a sum that may reasonably be regarded as prohibitively expensive and penalising the communication (18.5.12). This matter awaits the determination of the CJEU case in *Edwards v Environment Agency*.
- 20.5.10 Court of Appeal refuses permission to move to judicial review on grounds of non-compliance with the EIA Directive and failure to undertake an EIA screening opinion.
- 17.6.10 Communicant and others issue pre-action application for a group litigation order (GLO) to enable (the then) 350 residents to bring collective action in private nuisance alleging dust deposition and noise.
- 28.7.10 Telephone hearing held relating to the application for a GLO.
- 20.9.10 Hearing of GLO application but operator not ready to proceed.
- 11.11.10 High Court dismisses application for GLO on behalf of (the then) 491 residents, including the communicant.
- 2.12.10 Operator serves costs claim on the GLO applicants for £257,104 for costs between June and November 1010.
- 13.12.10 Communicant and others residents appealed GLO decision.
- 8.2.11 MTCBC states at the commencement of a planning inquiry to vary Condition 37 that the variation, the opencast and the Cwmbargoed processing plant should be subject to EIA.

- 6.5.11 The Inspector approves the appeal and grants permission to vary Condition 37.
- 6.5.11 (Re: Petition 671/2008) The European Commission notify members of the Petitions Committee of the European Parliament advising that (and contrary to Court of Appeal finding of 20.5.10) an EIA screening opinion of the Cwmbargoed coal processing plant would have led to a determination by the competent national authorities whether or not to undertake an EIA. The Commission seeks further comprehensive and detailed information from the national authorities.
- (The communicant is not aware whether the European Commission has completed its investigation in relation to the EIA matters. There has not, as far as the communicant knows, been any further report to Parliament members of the Petitions Committee.)
- 29.7.11 Court of Appeal dismisses appeal against the GLO decision and a request for a PCO following an undertaking by the operator not to claim more than £553 from each proposed claimant. The operator adds that it would not pursue those costs unless a claimant chose to pursue proceedings.
- 16.8.11 An application is made to re-open the Court of Appeal judgment of 20.5.10 in the light of the Council's statement that the operations including the Cwmbargoed processing plant should be subject to EIA. (MTCBC later retracts its EIA position and the Court of Appeal refuses the application to re-open.)
- 25.10.11 Communicant writes to the operator and requested that there be without prejudice meetings to resolve the continuing dust and noise problems.
- 15.6.12 Communicant writes to operator again setting out concerns in detail and requesting that there be proposals for mediation or resolution of the matter prior to issuing proceedings. The communicant requested details of dust and noise complaints and evidence from the operator that dust and noise was not causing a concern and that the allegation is unjustifiable.

- 30.7.12 The Communicant provides details of dust and noise nuisance over many years and again requested evidence and all data and information relating to dust and noise which might demonstrate that the communicant's claim was unjustifiable.
- 30.10.12 Communicant applies to High Court for costs protection prior to issue of proceedings (no. 2CF30125).
- 20.11.12 High Court provides directions in case no. 2CF30125.
- 16.1.13 Notice of a Case Management Conference in the proposed proceedings.
- 18.1.13 UK government enacts LASPOA Commencement Order No. 5, SI 2013/77, bringing s. 46 of the LASPOA 2012 to enter into force on 1.4.13.
- 31.1.13 High Court declines to direct that a one day hearing for costs protection be on the basis of 'no order for costs' or 'each party pays their own costs' and ordered that the hearing be on the basis of 'costs in the application'. This exposes the communicant to significant costs risk if unsuccessful.
- 5.2.13 Communicant appeals to the Court of Appeal against costs decision in case 2CF31025.
- Feb 2013 UK issues draft CPR Amendment Rules 2013 due to enter into force on 1.4.13.