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My ref:

Your ref:

6 September 1984

Dear Secretary of State

OPENCAST COAL SITE AT SPRINGHILL, STAFFORDSHIRE

PT11
You will have seen Michael Havers' reply of 4 September to Ian Gow's letter of 29 August seeking legal advice on ways of permitting movement of coal by road from this site. I am now writing to you to let you know my views on the options available to the National Coal Board.

In April, the Board sought the agreement of Staffordshire County Council to remove 1,000 tonnes per week by road from this site, a request which was refused by the Council in June. It is therefore open to the Board to ask me to determine whether the removal of this amount of coal from this site should be permitted. In view of what Michael Havers says in his letter, I should not need to follow the formal Section 36 route in determining this question but on grounds of natural justice I must give both the Board and the Council an opportunity of a hearing if either requests this. The information that I have suggests that the Council are likely to do so.

I would, of course, ensure that the hearing was arranged at the earliest possible moment and that a report of that hearing was placed before me expeditiously. We should then need to take a decision upon it. I must point out that since there were apparently good planning reasons why the condition was imposed in the first place it is not a foregone conclusion that the person who takes the hearing will recommend removal or modification of the condition, or that if this is the case we can easily find arguments for overturning this view on policy grounds which will not be challengeable in the High Court.

I understand that the Board may now be considering whether they need to move a greater amount of coal than 1,000 tonnes a week from the Springhill site. If that is so, since I can only act in default of agreement with the County Council, the Board would need to make a formal request to that Council setting out how their needs differ from those described in their April letter and asking again for the modification of the condition. If the Council refused to agree, then the same procedure could be followed. But the Board can of course pursue this course in parallel with asking me to determine the matter already refused by the County Council.

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In addition to these two options, it is of course still open to the Board either to take the view that in the terms of the planning condition an emergency exists and that therefore they can begin to remove the coal (a course which runs the risk of the Council immediately instituting enforcement action including service of a stop notice after 3 days, after which continuation of road movement would be a criminal offence until the enforcement appeal had been decided) or to seek a declaration from the Courts that such an emergency exists.

I am copying this letter to the Prime Minister, Michael Havers and to Sir Robert Armstrong.

Yours sincerely

A. H. Davin

for

PATRICK JENKIN

(approved by the Secretary of State
and signed in his absence)

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The Rt Hon Peter Walker MP

NAT IND

AT 12
COAL