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MR TURNBULL

7 September 1984

SPRINGHILL OPEN CAST COAL SITE

Departments are making a mountain out of a mole hill. There are only two practical alternatives open to us to speed this up.

Option 1

The Attorney General has advised that the Secretary of State for the Environment can implement the conditions of the original site authorisation granted in 1980 under the Open Cast Coal Act, 1958 without going through the time-consuming procedures of the Town and Country Planning Act, 1971.

The Secretary of State may determine the outcome of any disagreement between the NCB and Staffordshire County Council, ie whether or not coal should be moved by road. As Staffordshire are likely to object to a positive decision, Patrick Jenkin would appoint an inspector to hear oral evidence from the two principal parties, viz the NCB and the County Council. Third parties such as the Friends of the Earth would be able to submit written representations and could be heard at the inspector's discretion. But they could not prolong the hearings. There is no reason why this process should take more than a couple of weeks.

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There is a risk that the inspector may give greater weight to the original planning criteria which ruled out road transport than he does to the current industrial dispute. But the Board are only asking for a temporary waiver of the original conditions until rail transport is restored.

There is also little risk if Staffordshire appeal against a positive decision. The powers of appeal are very limited and an action brought to the High Court could only review whether the correct procedures have been gone through and the correct questions asked. The High Court could not go back to first principles and assess the judgements involved in the Secretary of State's decision. If the case did go to appeal it could be heard very quickly.

The NCB's original request was to transport 1,000 tonnes of coal per week from this site. They now wish to increase this quantity to 15,000 tonnes per week. We would still expect a positive decision in principle although the inspector may recommend a lower level of transportation than 15,000 tonnes in order to protect the local residential roads from undue disruption.

Option 2

The alternative approach is for the NCB to go to the courts and seek a declaration of emergency. The original

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site authorisation allowed the possibility of non-rail transport in an emergency.

However, the nature of the emergency was not defined. The courts will probably consider "emergency" more in relation to the matter of safety of the site and operational procedures rather than in the context of the current industrial dispute. Furthermore, an action which stressed the emergency nature of the current dispute would create the wrong psychological climate.

We consider that this option is of significantly higher risk than the first alternative.

Conclusion

We recommend that Patrick Jenkin should proceed with Option 1 without delay.

The NCB should formally ask the Secretary of State to determine the outcome of the current dispute under the provisions of the 1980 site authorisation. Even if an Inspector has to be appointed and the case goes subsequently to appeal, this procedure need not take more than a couple of weeks.

We consider that the risks of this approach are acceptable.

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DAVID PASCALL

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