

**Case Name:** *Friends of the Earth Ltd v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 3255 (KB) (18 October 2023)

**Full case:** [Click Here](#)

**Commentary:** This was an unsuccessful application by Friends of the Earth for specific disclosure, in anticipation of a planning statutory review, of a ministerial submission made to the Secretary of State.

West Cumbria Mining Limited (“the Developer”) had applied for planning permission for the mining of coking coal at Whitehaven in Cumbria. The application was called in by the Secretary of State and in the normal course a public inquiry was held and the inspector reported to the Secretary of State. The Secretary of State accepted the inspector’s conclusion and granted planning permission, a decision which was challenged by Friends of the Earth (with such challenge due to be heard at a rolled-up hearing).

In making his decision, the Secretary of State also had before him a submission from the Planning Casework Unit of the Department for Levelling Up, Housing and Communities. Friends of the Earth requested a copy of the submission for the purposes of their challenge to the decision to grant planning permission, but were refused by the Secretary of State on the basis that the reasons for his decision on the planning permission were fully set out in the decision letter. Unsatisfied with that response, Friends of the Earth brought this application for disclosure of the ministerial submission.

Sir Duncan Ouseley, sitting as a High Court Judge, began his judgment by observing that, in an exception to the otherwise applicable civil procedure rules, there is no general disclosure requirement in planning statutory review as the decision letter should provide the complete reasoning of the decision-maker. As such, where the Secretary of State agrees with the conclusions of an inspector, as here, the Judge considered that disclosure of a ministerial submission would generally not even be useful, let alone necessary, for the fair and just resolution of issues (such necessity being the appropriate test for disclosure set out by Lord Bingham in *Tweed v Parades Commission for Northern Ireland*).

Friends of the Earth advanced two grounds for specific disclosure.

Ground 1 was that the Secretary of State had erroneously taken into account the Developer’s contention during the inquiry that a s106 agreement would ensure that the mine would be net zero for the purpose of the UK’s carbon budgets and the ministerial submission was relevant as to whether the Secretary of State had misunderstood what the Developer was claiming or had misunderstood the factual position.

The Judge dismissed this ground as while there was obviously a dispute as to the meaning of the decision letter and issues around net zero for planning purposes, he could not see how the ministerial submission could assist with their resolution. All such arguments would have to be made with reference to the decision letter, not the ministerial submission.

Ground 2 involved consideration of whether paragraph 217 (as was) of the NPPF (which states that planning permission may be granted for an environmentally unacceptable coal extraction proposal if its benefits clearly outweigh its likely impacts) applied to the international carbon impacts of the proposal or only the national impacts. Friends of the Earth said the ministerial submission would be necessary for resolving that issue.

The Judge rejected this ground on the basis that interpretation of the NPPF was a matter for the court and the ministerial submission would be of no use whichever way it went. Furthermore, it is a matter of law whether, on some basis other than paragraph 217 of the NPPF, the issue of international effects was relevant or considered, and that matter of law would turn on interpretation of the decision letter. It is the mind of the Secretary of State that matters and that is shown by what he says in the decision letter, not what the Planning Casework Unit says to him in its submission.

Both grounds having been rejected, the application was dismissed accordingly.

*Case summary prepared by Dougal Ainsley*