

CONCH : Communities Opposed to New Coal at Hunterston

LEGAL CHALLENGE BRIEFING (Nov 09)

In September 2009 two members of the local community took the brave decision to come forward and challenge the Scottish Government in the courts, in an attempt to halt the proposed coal power station being built at Hunterston, near Largs in North Ayrshire. A date of a preliminary hearing has now been set for December 18th 2009 and we need you to help us raise £15,000 before then so that our legal challenge can go ahead.

This briefing explains what the grounds for the legal challenge are and why it is so important, what stage the action is at and what you can do to support it.

What is the legal challenge about?

Two members of the local community have made an application for Judicial Review in the Court of Session. The application seeks to remove the proposed coal station along with a range of other industrial developments planned at Hunterston from the National Planning Framework (NPF), or in the alternative, to take out the NPF in its entirety. The grounds, in summary, are that the Government has failed to meet the standards for community consultation set out in both EU and Scottish law when they consulted on the inclusion of Hunterston in the NPF (see below for further detail).

Why is the National Planning Framework important?

The NPF was adopted by the Scottish Government in 2008 and sets out a number of key projects which the government has decided are of national importance. Those projects which are listed, like Hunterston, are no longer subject to the usual planning application process, but are deemed, in effect, to have permission in advance. In other words although developers must make an application for planning permission, it is not possible for anyone to object to the need for the development. Objections can only be made about the details of the development such as design elements or how it is implemented, rather than the principle of a coal-fired power station at Hunterston.

What is the basis for the legal challenge?

Initially when the NPF was being drawn up, the Government conducted a public consultation on the proposals. However, after this consultation was closed a number of major projects, including the coal station at Hunterston, were added. There was then a second very limited consultation. Very few people were made aware of the fact that Hunterston had been added to the framework and so had no opportunity to object. In effect local people were denied an opportunity to make their voices heard.

When drawing up the NPF the Scottish Government was required to do a Strategic Environmental Assessment and as part of that process are required by law to ensure that those likely to be affected by any proposed developments are made aware of them and so have the opportunity to make their views known. The failure to meet these requirements is a key part of our legal challenge.

What happens next?

There is a preliminary hearing set for 18th December, but this will not consider the arguments described above. These will be considered at the full hearing which is not likely to be scheduled until later in 2010. Instead, the preliminary hearing will consider whether the applicants should be granted a Restricted Costs Order.

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What is a Restricted Costs Order?

In a judicial review there are (at least) two sets of costs. There are our own costs (which cover our solicitor and advocate acting for us) and potentially, the other side's costs. There is a risk that if we lose our case the courts could award the opposing sides costs against us. In other words we would be liable to meet the costs of the Scottish Government legal team (and even Ayrshire Power if they join as well) as well as our own. This is why it is very difficult to predict how much a case might cost in advance.

A Restricted Costs Order can be made in advance of the main hearing and would mean that the courts would limit our liability for the other side's costs, even if we lose at the main hearing. Unfortunately, even preliminary hearings for Restricted Costs Orders are expensive and of course we if we lose we could have the Government costs for the hearing awarded against us. In that case the cost of the initial hearing could be around £15,000

Why is a restricted costs order important?

Despite the fact that the two individuals bringing the action are on low incomes and eligible for legal aid, legal aid has only covered the costs of our initial legal advice and won't cover the costs of bringing our legal action to court. At the moment without a restricted cost order the estimated potential costs for the case in total are in the region of £50,000 to £100,000 (including the preliminary hearing) depending on the others side's legal bill.

It is really important that we get a Restricted Cost Order in order to be able to reduce these costs and enable us to go ahead with his action. Many similar community legal actions have had to pull out at the last minute for fear of huge legal bills - the liability for which falls on the brave individuals who have put themselves forward. We have been advised that we have a good case for an award of a Restricted Cost Order and if we get one not only will this enable us to proceed with our legal challenge, but it will set an important legal precedent which will enable many other community campaigns, NGOs and charities to take legal action on similar issues and get their voices heard.

What are the wider benefits of taking legal action?

If we succeeded in getting Hunterston out of the NPF that doesn't totally rule out the possibility of the developers making an application for planning permission in the future, but we would ensure at the very least that we have the opportunity to object to the need for the development itself.

However there are many wider benefits to taking legal action and the lodging of our legal challenge has already had a huge impact outside of the courts. The fact there was court action pending, along with the massive local opposition campaign, would certainly have influenced DONGS decision to pull out of the proposal. It is important now that we continue to keep up the pressure on both Ayrshire Power and the Scottish Government. It demonstrates the strength of our opposition, enables us to maintain a national media profile and makes it more difficult for Peel Energy to attract funding.

STOP HUNTERSTON COAL STATION : MAKE A DONATION TODAY

You can make donations direct to our solicitor to support our legal challenge. The bank details are:

The Co-operative Bank

McCartney & Co - Client Account

Sort Code 839125 Account number 70981971

You can also send a cheque made payable to McCartney and Co and sent to:

Environmental Law Centre Scotland (SC04000)

65 George Street

Paisley PA1 2JY

For further information please email francesmccartney@mac.com or info@conchcampaign.org