

SECRET



copy 1
NBPm AT 1/10
a/s

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

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My ref:

Your ref:

Dear Secretary of State

See Pt 12

1 October 1984

Thank you for your letter of 17 September.

I have consulted Michael Havers urgently on my power to make a determination under the condition in the Springhill case. He advises that for me to have jurisdiction it must be shown that there has been a failure to agree. The Board applied to the Council in April for consent to move 1,000 tonnes of coal per week by road and the Council refused their consent. I therefore have jurisdiction to make a determination on the movement of that amount of coal. However, because the Board have not formally asked the Council to agree to the movement of 15,000 tonnes per week, Michael Havers advises that until the Council have had that question put to them and have refused to agree (either expressly or by failing to reply to the Board) I have no jurisdiction to make a determination in respect of that larger amount. With the best will in the world, I cannot ignore that advice. The NCB should now formally ask the Council to agree to the movement of 15,000 tonnes per week.

Turning now to other sites affected by the lack of rail transport, I still await Michael Havers' advice on the circumstances in which I might use the powers laid down in Section 49(4) of the Opencast Coal Act. If he feels that in some circumstances it is acceptable to use these powers, then I shall be very ready to help you in any way in which he advises me that it is open to me to proceed.

The Springhill case shows that we must look closely at the circumstances of each case and the precise wording of any conditions. You say that Springhill is the only case to which the particular planning condition applies. What we must do now is, as a matter of urgency, to ask our officials to examine the particulars of each of the 8-10 sites to which you refer. I have asked my officials to discuss these with your Department straight away.

I have not said that an Inspector would necessarily find against the Board. I have simply pointed out that he would have to take account of any representations received and the reasons why the conditions were applied in the first instance.

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I am anxious to do all I can to help over what is clearly a troublesome constraint.

I am copying this letter to the Prime Minister and Michael Havers.

Your sincerely

AH Davis

for

PATRICK JENKIN

Approved by the SAs and
signed in his absence

The Rt Hon P Walker MP.

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COOL
AT 13

1 OCT 1984

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