

## Appendix B

### Evidence - Unlawful Coal Extraction

#### Letters in Correspondence with the Responsible Public Agencies:

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Here are a collection of communiqués between ourselves and the Local Planning Authority (LPA) here in Merthyr Tydfil about the issue of unlawful coal extraction from the Ffos-y-fran opencast coalmine/Land Reclamation Scheme.

It can be seen from the responses, and the timestamps that the LPA were initially reluctant to respond, or even accept to the transgression and then reluctant to act. It has to be understood that this was a huge coal mining operation working in plain sight hauling coal alongside a main road and shipping it out on trains and lorries in plain sight of that road. *[...and note that the railway line was run by Transport for Wales; a Government owned railway service]*. The LPA offices are but 1.5 Miles from the site in the centre of Merthyr town

This is a selection of communiqués, and we were sending photographs of the transgressions regularly to the LPA. These showed convoys of large (77 Ton) coal lorries laden with coal travelling from the mine to the railhead on their private haul road alongside the main road. Photographs of the long coal train at the railhead being loaded with coal (1,500 Tonnes capacity across its 20 trucks), and the big 44 Ton bulk carrier lorries being loaded with coal for delivery to the cement works around Rugby were also included. Also, as they were working beyond their mining boundary for years the large Komatsu SuperShovels were working high on the mountainside following (unlawfully) the lucrative coal seams and were visible from the surrounding area, especially the A4060 'sliproad', dual-carriageway. Yet, they didn't formally acknowledge, or go up to verify our assertions, until 4th May 2023; 8 months after the mining company's planning consent ended on 6th September 2022.

The LPA were telling us that the works that we were observing were maintenance works after a 'slippage' (landslip) in the mine due to bad weather. Slippages of spoil in the steep and loose sided void are a common occurrence and are dealt with regularly, and in short order. They don't require the mining of 1,000 to 1,500 Tonnes of coal per day for 8 months to remedy them! The LPA was 'gaslighting' us and we were incensed but couldn't get them to act. This information was also being used in the Senedd as the information from the LPA was all they were hearing. We wrote to the Members of the Senedd directly to inform them of what was happening at Ffos-y-fran and of the misinformation from the LPA and even the minister, but it changed nothing on the ground.

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Mon **26-Jun-23** 1:24 PM

David,

will you be implementing enforcement action tomorrow (Tuesday 27th June 2023) as promised in your letter of intent?

There were laden coal lorries and a coal train at the Cwmbargoed railhead/CDP this morning at 08:45, so coal extraction continues at Ffos-y-fran.

We have had another motocross event this weekend and we had reports of noise and dust from either side of the valleys, (Merthyr and Fochriw; Merthyr and Caerphilly authorities).

We also had very loud, banging, 'dance'/rave' music here in Merthyr until at least 12 midnight, (that's when I managed to fall asleep! So could have been longer). Personally, we couldn't confirm the motocross as the source as we only have occasional access to a car at the moment, though the wind direction and the direction of sound would indicate that it was a likely suspect. Is this allowed under permitted development? Or, is it an illegal rave?

We have also confirmed that, as these are two day events, they are providing camping onsite for Friday and Saturday nights; many motor caravans, we were informed. We don't have an exact figure, but certainly more than 5. It is my understanding that this is not allowed under 'permitted development', but as the legislation is complex it is difficult to discern.

From the posts on Facebook and other social media sites, by those running the motocross events, there have been 7 confirmed practice and event days on this track so far. There may have been more, but this is as many as we can determine. It is our understanding that permitted development only allows for 14 days across a rolling year.

Are the number of events being recorded by the Local Planning Authority as the official arbiter of planning consent and permitted development? Can we expect to see enforcement action from you if, or when, they exceed their allotted maximum?

Also, the track (jumps, bumps, berms, and viewing/judging stations at each jump) has not been bulldozed down between events, so it is a permanent or semi-permanent structure that we also don't believe conforms with permitted development.

Could you please answer the following questions:

1. Are the number of events and practice days at the motocross track on top of Overburden Mound 3 (OB3) being officially recorded by the Local Planning Authority (LPA)?
2. Is camping allowed onsite, for how long, and for how many caravans?
3. Is tent camping allowed onsite?
4. Are they allowed to play loud (very!) music well into the night/early morning?
5. Who, in the local authority, would be responsible for the control of this loud music were it to occur? Is it environmental health, or the LPA under these circumstances?
6. Should they be levelling the track and other semi-permanent structures between each event?
7. With all the work carried out on the top of the spoil tip, is the height of Overburden Mound 3 now beyond the maximum height of 410 Metres AOD as defined in their planning consent?
8. Who owns the spoil in Overburden Mound 3? (As it was part of Merthyr Common and should now be being restored there, we believe that is the LPA on our behalf)
9. If the answer to question 7 is the LPA, then has the LPA allowed the use of the spoil tip/OB3 for the purpose of motocross events?

10. Would the Local Planning Authority issue enforcement action when they exceed their allotted maximum event count under permitted development?
11. Will the Local Planning Authority issue enforcement action for the 'permitted development' infractions that we believe are occurring at the OB3 motocross track?

Chris Austin

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Fri 19-May-23 5:21 PM

Dear Mr Austin,

Thank you for your email and photographs of the operations taking place at the site. Can I assure you that we are actively investigating the breaches in planning control and that enforcement action will be taken. I have also personally undertaken a number of site visits as part of our investigations. **However, due diligence also requires us to review other matters as well, which is not limited to just the continued coal extraction and requires us to review any other potential planning breaches that may occur**, for example the operations you have identified on the overburdens.

Kind regards

David Cross

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Fri 19-May-23 2:40 PM

Dear Mr Austin,

Thank you for your email and photographs of the on-going activity at Ffos Y Fran.

In regards to the issue of material being deposited on OB3, this is something that I have noted in my more recent site visits and **will form part of our enforcement investigations**.

Kind regards

David Cross

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**From:** Chris Austin [mailto: ]  
**Sent:** Thursday, May 18, 2023 8:52 PM  
**To:** 'Chris Austin'; 'Cross, David'  
**Cc:** ; [dawn.bowden@assembly.wales](mailto:dawn.bowden@assembly.wales);

**Subject:** RE: Today's photo's from Ffos y fran [NOT PROTECTIVELY MARKED]

Hi David,

just a few snaps today I'm afraid, but you can clearly see the ongoing coal extraction, shipping out coal to customers by rail and road, and the work on top of OB3 has intensified.



**From:** Chris Austin [mailto: [REDACTED]]  
**Sent:** Wednesday, **May 10, 2023** 12:40 PM  
**To:** [REDACTED]  
**Subject:** Ffos y fran coal extraction continues unabated

David,

a few photographs to evidence the continued coal extraction at Ffos-y-fran. Taken somewhere around 10:30. The trucks were coming in thick-and-fast this morning, so they are working at quite a pace despite the rain.

I didn't see a train, but I may have been a bit too early. Maybe they're still catching up after the holiday.

Chris Austin

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**From:** Chris Austin [mailto: [REDACTED]]  
**Sent:** Thursday, **May 4, 2023** 11:25 AM  
**To:** 'Chris Austin'; 'Cross, David'  
**Cc:** 'Sammon, Declan (Councillor)'; 'Gibbs, Kevin (Councillor)'; 'Jones, Judith (Planning & Neighbourhood Services)'; dawn.bowden@assembly.wales  
**Subject:** RE: Ffos y fran - ongoing coal extraction and OB3 works [NOT PROTECTIVELY MARKED]

Hi David,

they are still quite openly mining coal at Ffos-y-fran. Popped up quickly to check this morning and lorries are coming into the CDP fully laden with coal at around 5 minutes or less between them.

There was a long rail freight train being loaded there again this morning which indicates the sort of tonnage that they must be achieving.

You do need to go up and see for yourself, as the LPA should be 'policing' the operation, not me really. It would carry far more weight coming from you, and as I said previously, making arrangements is not going to gain you any real evidence of them working coal. I don't usually need more than 15 mins myself, so 30 mins would suffice with travel from the bottom of town; so not much of an overhead, and the weather is fine.

Chris Austin

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On **4 May 2023**, at 15:11, "Cross, David" < [REDACTED] > wrote:

Dear Mr Austin,

Thank you for your email and for taking the time to inform us of the continued operations taking place at Ffos Y Fran. The information you have provided and the photographs you have forwarded on to us is appreciated.

Notwithstanding our intentions to meet with the mine operator, I have already visited the site myself to confirm whether coal mining operations are still taking place. **It appears that I have witnessed similar operations that you have referred to in your photos.**

Can I reassure you that we are actively investigating the breaches in planning control and will be pursuing enforcement action, of which there is due diligence and process that we also have to adhere to.

Kind regards

David Cross

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**From:** Chris Austin [mailto:████████████████████]  
**Sent:** Wednesday, May 3, 2023 12:19 PM  
**To:** 'Chris Austin'; 'Cross, David'  
**Cc:** 'Sammon, Declan (Councillor)'; 'Gibbs, Kevin (Councillor)'; 'Jones, Judith (Planning & Neighbourhood Services)'  
**Subject:** RE: Ffos y fran - ongoing coal extraction and OB3 works [NOT PROTECTIVELY MARKED]

Hi David,

I had a bit of time on my hands this morning so popped up with my camera for about 15 mins. Three fully laden coal lorries came into the CDP in that time. Also, a long coal train left whilst I was there (approx. 11:20). Heavily laden by the sounds of it as the train was struggling to pull off and gain momentum.

There were coal lorries on the haul road when I returned. I would say that a fully laden lorry every 5 minutes is working coal at quite a rate; probably not too dissimilar to 'normal' extraction rates, i.e. when they had planning consent to do so.

I took quite a few photo's but can't send them all as it will bump the mail server limits. I've copied in 3 examples here. It is very easy to gather the evidence from public land/the main road as they are working the coal quite openly.

Chris Austin





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**From:** Chris Austin [mailto:████████████████████]  
**Sent:** Tuesday, May 2, 2023 8:50 PM  
**To:** 'Cross, David'  
**Cc:** 'Sammon, Declan (Councillor)'; 'Gibbs, Kevin (Councillor)'; 'Jones, Judith (Planning & Neighbourhood Services)'  
**Subject:** RE: Ffos y fran - ongoing coal extraction and OB3 works [NOT PROTECTIVELY MARKED]

thank you David,

In all honesty, if you arrange with the mining company to inspect the site, they will arrange not to be extracting coal whilst you are there...they may be immoral, but they aren't stupid. The Queen never saw a dirty street, nor a beggar, and if you ask a thief if he robbed you, then chances are that he's not going to say yes.

If you wish to see what the company is actually doing on a day-to-day basis then I would suggest that you slip out and visit the site during your dinner hour, or when you tell everyone that you are to be somewhere else.

As all mined coal has to be transferred by lorry across the haul road to the Coal Disposal Point (CDP) at Cwmbargoed and then be loaded onto a large train, or a bulk carrier lorry there (coal-by-road to Cemex; if they still supply them); anything that needs to be seen or recorded can be seen from the public road that runs alongside the site and the CDP. No dirt, rocks, nor spoil will be transported along the haul road to the CDP; it has no worth to them and needs no further processing, nor transportation.

May I respectfully suggest that you ask to see the manifest that Railtrack keep for every train journey on the number of trips and tonnage of coal transferred to TATA Steel in Port Talbot? (The Coal Authority would also be supplied with this information and may be an easier source of this data). After all, they aren't extracting coal just to stockpile it; they have to sell and transport it to the customer to make it all worthwhile.

The bulk carrier lorries usually leave early/first thing in the morning, and the train around 10:00-11:30am ish.

Chris Austin

ps Alyson drives over there most days for work and snaps the lorries as she passes. See today's snaps.

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**From:** Cross, David [mailto: [REDACTED]]  
**Sent:** Tuesday, May 2, 2023 1:32 PM  
**To:** 'Chris Austin'  
**Cc:** Sammon, Declan (Councillor); Gibbs, Kevin (Councillor); Jones, Judith (Planning & Neighbourhood Services)  
**Subject:** RE: Ffos y fran - ongoing coal extraction and OB3 works [NOT PROTECTIVELY MARKED]

**Classification: NOT PROTECTIVELY MARKED**

Classification: **NOT PROTECTIVELY MARKED**

Dear Mr Austin,

Thank you for email below and for bring to our attention other suspected works/operations that may be taking place at Ffos y Fran, which may not be related to the restoration works.

I am in the process of arranging a meeting with the operators of the site and I will raise this matter with them in order to seek clarification on what may be taking place. In regards to any continued coaling, this is something I will be inspecting as part of any site visit, which forms part of any enforcement action.

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**From:** Chris Austin [mailto: [REDACTED]]  
**Sent:** Friday, April 28, 2023 3:25 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Ffos y fran - ongoing coal extraction and OB3 works

David,

for your information.

We went up to the site this morning and the mining company are still extracting, processing and transporting coal. We watched several full coal lorries enter the CDP at Cwmbargoed at around 13:30.

Also, work has restarted on the top of overburden mound 3 (alongside the railway) and word-of-mouth supports what we told you a few months ago; they are working on the off-road motorcycle track and a public access road. There's a blue digger working up on top there at the moment, and I can't see any reason why they'd still be tipping spoil offsite and re-profiling the top of an external overburden mound at this stage of the restoration process.

Sources are telling us that they are looking to put on their first bike race in 2 weeks time.

Obviously, this is anecdotal, but work up there is ongoing, and for what reason?

Chris Austin

ps sorry, only a quick and poor snap, but as they are openly coaling, they are back-and-forth on the haul road alongside the Bogey Road so it shouldn't be too difficult for you to confirm.

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On 26th April (2023) the Council's Planning Committee voted unanimously to refuse permission for the Application in accordance with a recommendation from the Council's planning officers that the applicant had, in summary,  
 (1) failed to demonstrate any wholly exceptional circumstances as required by Welsh policy, and that  
**(2) the proposed development failed to provide an adequate contribution towards the restoration, aftercare and after-use of the site, to the detriment of the surrounding environment and in conflict with local policies.**

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*Dyddiad/Date:*

11/04/2023

*Ein Cyf./Our ref.:*

P/22/0237

**Gofynnwch am/**Please ask Hugh Towns for:

*Eich Cyf./Your ref.:*  
*e-bost/e-mail:*

**Llinell Uniongyrchol/Direct Line:**

Dear Sir/Madam  
**Application No.**

P/22/0237

**Location:**

Ffos Y Fran Land Reclamation Scheme East Of  
A4060 Slip Road Merthyr Tydfil

**Proposed Development:**

Variation of conditions 3 (Coal Extraction) and 4 (Final Restoration) of planning permission APP/U6925/A/10/2129921 to extend the life of the existing mine until 31st March 2024

I write to advise you that revised information has now been submitted for the consideration of the Local Planning Authority to extend the life of the existing mine until 31<sup>st</sup> March 2024, at which point coal production at Ffos Y Fran would cease completely.

The application details, including the plans and other documents submitted with it can be viewed online via the planning search page on

<http://www.merthyr.gov.uk/resident/planning-building-control>. The application details can also be inspected electronically at the Civic Centre, Castle Street during normal working hours.

Any comments you have previously made will still be taken into consideration in the determination of the planning application. However, if you wish to make further comments this should be emailed to [planning@merthyr.gov.uk](mailto:planning@merthyr.gov.uk) or submitted in writing to the Director of Neighbourhood Services at the above address **by the 25<sup>th</sup> April 2023**.

If you have any queries in relation to the contents of this letter please do not hesitate to contact the above name officer.

Yours faithfully

**JUDITH JONES**

**Director of Neighbourhood Services**

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**From:** Chris Austin [mailto: [REDACTED]]  
**Sent:** Tuesday, February 28, 2023 2:58 PM  
**To:** 'Dawn Bowden MS'  
**Cc:** [REDACTED]  
**Subject:** RE: (Case Ref: DB3663)

thanks very much for that Dawn. I'm afraid that MTCBC LPA no longer reply to our communiqués.

Chris Austin

ps Photo's from 16th Feb. I've been ill, so haven't been able to get up there since. Sorry for the poor pictures; we were driving at the time. Stopped for one, but the other was on the move! Old 'phone, (and one-handed; not bad for an old man!) but you can see the large chunks of coal coming off site, and the empty lorry travelling back onsite after discharging its load. They aren't trying to hide anything, and the lorries travel back and forth all day, every working day. The long train visits regularly and they fill it up full of stuff which looks black and very much like coal, from a large mound of black coal like stuff at the far side of the disposal point where these lorries tip their contents. No train, or bulk container lorry if it comes to that (I'm not sure if the coal-by-road tonnage to Breedon cement [*EDIT Chris Austin - we now know it was Cemex cement*] is still being met; it's a very early start), would transport anything without a manifest; it's a legal requirement, so it could be made available to anyone in authority who'd care to ask.

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**From:** Dawn Bowden MS [mailto: [REDACTED]]  
**Sent:** Tuesday, February 28, 2023 2:27 PM  
**To:** [REDACTED]  
**Subject:** (Case Ref: DB3663)

I will put your points to the Council's Chief Executive and seek a further reply.

Thanks

**Dawn Bowden MS**

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**From:** Chris Austin [mailto: [REDACTED]]  
**Sent:** Tuesday, February 28, 2023 12:06 PM  
**To:** 'Dawn Bowden MS'  
**Cc:** [REDACTED]  
**Subject:** RE: (Case Ref: DB3663)

Dawn,

we have provided evidence to MTCBC LPA that the company is digging and selling coal since their planning consent ended on 6th September 2022. The long coal trains continue to leave the Cwmbargoed Disposal Point loaded with coal. Where is the coal coming from? The lorries openly drive back and forth from the mine loaded with coal to the disposal point every day. Where is this coal coming from? This has carried on for 6 months now and the LPA has chosen to turn a blind eye and let it carry on.

The Railtrack manifests will tell what tonnage they're moving; why doesn't the LPA ask for them then ask why they are still digging and moving coal?

MTCBC's stance has now gone beyond ridiculous; beyond plausible denial, it's now culpable.

Chris Austin

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**From:** Dawn Bowden MS [mailto: [REDACTED]]  
**Sent:** Tuesday, February 28, 2023 9:35 AM  
**To:** [REDACTED]  
**Subject:** (Case Ref: DB3663)

Dear Chris,

Following further recent queries of the local planning authority their position as of late January is as follows:

"To clarify, the planning permission enabled Merthyr South Wales Ltd to extract coal until September 2022 after which point such operations should then cease and the restoration on site can continue. We currently have an application which seeks permission for a further 9 months to continue coaling within the same site area. It is my understanding that a further application is anticipated later this year, which would seek permission to extend the mine and then continue coaling for a further 3 years. As part of this a revised restoration scheme is likely to come forward.

**At present we are of the view that the works taking place on site largely relates to the slippage and incorporates some restoration works.** Should this situation change it would be necessary for us to consider whether a breach in the planning conditions has taken place and whether it would then be expedient to take enforcement action pending the determination of the current application".

I believe that queries on this issue should currently be directed to the local planning authority but if they do not respond I am happy to seek clarification.

Best wishes

**Dawn Bowden MS**

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To: 'dawn.bowden@assembly.wales'

Dawn,

I have recently sent this e-mail to David Cross of the MTCBC LPA.

We are, and we have been for some time, very concerned about their intransigence relating to the ongoing coal mining activity at Ffos-y-fran that has carried-on beyond the end of their planning consent.

We have informed the authority of this 'coaling' activity since their planning consent ended on 6th September last year (2022), asking for enforcement action, but to no avail.

We now find them trying to say that they didn't know about this activity, and thought that they were dealing with landslide remedial works, despite us informing them and providing photographic evidence. To say that we are incensed is an understatement!

Alyson travels over the Bogey Road every day and we use it regularly to avoid the Dowlais holdups, so we are fully conversant with the continued coal mining that has been going on at the site since the end of their planning consent, and have taken photographs to record the activity. The mining company have done nothing to hide this activity and it would be quite clear, at any time in the day, to anyone who drove past the site what was going on there. Lorries filled to the brim with coal heading for the disposal point and regular coal trains leaving the railhead cannot be mistaken for remedial works nor restoration works.

We watched coal lorries travelling back and forth today and a large coal train at the railhead, so the work carries on. Of course, I'm quite sure that Railtrack's and Cemex's (Breedon's) manifests would tell the full story of the volume of coal that has been produced across the period.

I realise that it is not directly your responsibility, but I just wanted to take this opportunity to give you the facts, and keep you up to date with what's going on.

Chris Austin  
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**From:** Planning [mailto:Planning@merthyr.gov.uk]

**Sent:** Wednesday, February 15, 2023 3:00 PM

**To:** Chris Austin

**Subject:** RE: Continued Works at Ffos y fran Opencast Coalmine - fao David Cross

Hi

I confirm receipt of your email.

Regards

Julie

**From:** Chris Austin <[REDACTED]>

**Sent:** 15 February 2023 13:52

**To:** 'Chris Austin' <[REDACTED]> Cross, David

<[REDACTED]>

**Cc:** Planning <Planning@merthyr.gov.uk>; Jones, Judith (Planning & Neighbourhood

Services) <[REDACTED]>

**Subject:** RE: Continued Works at Ffos y fran Opencast Coalmine - fao David Cross

Hi David,

could you/someone please acknowledge receipt of this e-mail?

Chris Austin

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**From:** Chris Austin [mailto:[REDACTED]]  
**Sent:** Monday, February 13, 2023 10:20 AM  
**To:** 'Chris Austin'; [REDACTED]  
**Subject:** RE: Continued Works at Ffos y fran Opencast Coalmine

Hi David,

I forgot to ask; could you acknowledge receipt of this communiqué? I still have little trust of electronic communications.

Many thanks,

Chris Austin

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**From:** Chris Austin [mailto:[REDACTED]]  
**Sent:** Monday, February 13, 2023 [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Continued Works at Ffos y fran Opencast Coalmine

David,

I'd like to ask a few questions, and pass on some information, on the ongoing activities at the Ffos-y-fran (FyF) opencast coalmine.

**Firstly**, coaling at the site has continued beyond the end date of their planning consent on 6th September 2022. Also, it has been at an accelerated rate by the frequency of lorry movements.

My wife passes the site twice a day normally, and we travel across the Bogey Road regularly to avoid any holdups in Dowlais, so we keep abreast of the activities up there.

As you are aware, the mining company extracted coal continuously and intensely up until Christmas, and started back again in the New Year. Over the last couple of weeks though, they have changed pace, and appear to be working at a reduced rate. They are still 'coaling', and the trains are still leaving the site, but it appears to us that the frequency of the lorry movements has decreased.

We are not aware of you, the LPA, issuing an enforcement order, so we have no idea why they would ramp-down the coaling work, and we can only speculate. This is possibly just a temporary thing and they'll start mining in earnest again soon as they are losing (failing to make!) large sums of money whilst working at less than full capacity.

Whichever way you look at it, they have been mining coal for over 5 months (so far) beyond their consented period, and at an accelerated rate. At this rate they will likely have de facto achieved their aims of a 9 month extension.

**Secondly**, the work on overburden mound 4 (the one that runs alongside the railway), has intensified, and there are quite a lot of diggers, bulldozers and lorries currently servicing the work on top of the mound.

They are building up the top of the mound with spoil and raising large walls around the edge of the plateau. They are also enhancing the access roads to the top of the spoil heap and around the base. Speaking to local residents, the workers are crowing about it becoming a motorbike track and that they are working on it in earnest at the moment.

Obviously, we have several problems with those works as part of our ongoing issue with the restoration of the site, with the new proposal itself, and also with the future of that site.

The mining company's current planning consent, that which they are attempting to modify, has a restoration policy that would see this overburden mound returned to fill the mining void and be used to re-profile the hillside at 'Ffos-y-fran'. Nothing has changed in this course of action.

As part of their Section 73 (S73) application the applicant/mining company are talking about modifying the restoration policy, but that has not been agreed in any form and still sits with the Planning Directorate awaiting a decision as to whether it will be determined by the Welsh Government. So, as nothing has been determined yet, why would they be pressing ahead with building a motorcycle track?

Of course, there is a possibility that the work is not for the building of a motorcycle track, but surely, as the overburden mound is stable, at full capacity/height, and just there for storage until it is to be moved back onto site then why would they be doing so much profiling work?

Even in the event of them gaining approval of their S73 request, my understanding would be that they would have to agree a new restoration policy, to free up the overburden mound and then submit a planning application to build the motorcycle track. Both of these proposals would, not unsurprisingly, be fiercely resisted by residents here, and possibly over in the Rhymney, Darren, and Bedlinog valleys too.

This would take quite some time to resolve, so again, why are they re-profiling overburden mound 4?

**Thirdly**, a further question on the ongoing coaling work. Mine workers are saying that they are being allowed to continue coaling by the planning office and that they, (ie MTCBC), won't do anything to stop them.

I suppose you need to understand what they are saying here. If the LPA has the power to enforce the planning conditions and stop them extracting coal, but chooses not to do so, then this could be construed as supporting the ongoing coal mining activities. In our view, this lack of action will then preclude you from taking any legal action against the mining company in the future for breaching their planning consent because the LPA is retrospectively complicit, per se. I understand that undertaking enforcement action is discretionary for the council, but there are very real impacts arising from ongoing mining activities which should be a priority for the council. A breach of planning condition is also clearly listed as justification for undertaking such action within your [own guidance](#) and so I'm unclear why such action – especially at the scale the mine operates – isn't being taken.

Something else that's being said is that they are only taking coal from a screening/recovery exercise, not from mining and that's a completely different thing.

It is our understanding that the term 'coaling' and 'coal extraction' being used in their planning consent covers all forms of extracting coal. There are no specific statements excluding screened coal from the planning conditions. Whether it's ignorance or blatant disregard for planning laws, it's clear that MTCBC needs to take action to stop extraction from the site in any form, until we know more about the future of consents at the site.

**Fourthly**, the company still appears to be mining coal below overburden mound 1 (OB1), (alongside the A4060 slip-road next to the Trecatti landfill site). It is our understanding that they don't have mining rights below OB1 and the area was only allocated for spoil tipping purposes. It is also our understanding that a coal seam runs under the spoil tip, but that they are only allowed to work down to datum/original ground level when restoring from OB1 and not mine the coal. This work has been going on for some time now but it is impossible for us to determine whether they are mining coal, but their workings have been vertical and deep, so they are working the face a great distance below datum. We cannot confirm coal mining activity, but by inference, if there is a coal seam there then they would have had to have been removing the coal.

Could you please:

1. Confirm that you, the MTCBC LPA, haven't issued an enforcement order on coal extraction activities at Ffos-y-fran beyond the 6th September 2022?

2. Confirm that the mining company has continued to extract coal beyond the 6th September 2022?
3. Confirm that the term coal extraction covers screened/recovered coal as well as mined coal. If not, where is this specifically mentioned in the planning consent?
4. Confirm that retrospective legal action in relation to working beyond their planning consent would not be possible under the circumstances, i.e. enforcement action not taken by the LPA?
5. Confirm that no construction activity has been sanctioned by the LPA for the building of a motorcycle track on the top of overburden mound 4 (the one next to the railway line, we believe)?
6. Confirm that no planning application has been received in relation to the construction of a motorcycle track on the top of overburden mound 4?
7. Confirm that the company should not be mining below datum/original ground level at overburden mound 1?
8. Can you confirm that a coal seam runs under overburden mound 1?
9. Can you confirm that the company has been removing the coal; possibly in contravention of their planning conditions?

We are incensed by the way this company is working as it wishes and is holding you, the Welsh Government and the residents of Merthyr to ransom over the restoration of this mine.

The mining company is claiming poverty, but estimates of their turnover in 2022 is somewhere around £160 Million. This is using conservative figures for the average global coal price across the period and their own production figures which we believe that they exceeded. Their profit margin should be high, and with the windfall coal prices that currently prevail they could readily pay for the restoration of the site out of last year's income alone!

The ridiculous argument about Covid losses is easily refuted when you think that they were making a comfortable profit at the then price of £50 per tonne and last year's average, conservative figure was £250 per tonne.

Even if you discount their windfall, they only had to set aside around £7 Million per annum to cover the costs of the Welsh Government's estimated £50 Million to fully restore the site; not a difficult target with their decent profits over the last 7 years of operations.

And, of course, they'll then be reimbursed the £15 Million from the ESCROW account when the restoration work is completed.

We would be grateful for a full and reasoned respond to our above questions at your earliest convenience.

Chris and Alyson Austin

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[REDACTED] 'planning@merthyr.gov.uk'

Judith,

just for your information.

Merthyr (South Wales) Ltd. continue to extract coal at Ffos-y-fran. Lump coal; so from the mining operation; 42 days beyond the end of their planning consent to do so, (condition 3).

Chris Austin



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Dawn Bowden MS [REDACTED]  
(Case Ref: DB3663)

Dear Chris,

To constituents who have contacted me.

#### **Ffos-y-Fran update**

I have now received a further update from the local authority regarding the current situation at the open cast operation.

The local planning authority advise me as follows:

“If coal mining operations continue on site, this would result in a breach of the planning conditions and may be subject to enforcement action. At this stage because a planning application has been submitted, which seeks to amend to the current permission and enable operations to continue on site, it would not normally be expedient to take enforcement action

until that application has been determined. In the event that permission is granted, that may resolve any breaches in planning control.

In the situation where consent is not granted, it would be necessary to further review any enforcement action. There is some potential for there to be an impact on the restoration of the site as a result of the delayed start of the final restoration phase, insofar as the period of time in which to undertake those works would be reduced, given that this is expected to be completed by December 2024".

Yours sincerely

**Dawn Bowden MS**

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Hi

Yes the application is valid so we have started to consider the application. The determination date is not known yet as we need to first consider any representations received and any responses from the consultation exercise. Representations can be made until the 19<sup>th</sup> October 2022. David Cross is the case officer.

Regards

Judith

**From:** Chris Austin <[REDACTED]>  
**Sent:** 20 September 2022 18:22  
**To:** Jones, Judith (Planning & Neighbourhood Services) [REDACTED]  
**Cc:** Barry, Andrew (Councillor) <[REDACTED]> Jones, David (Councillor) <[REDACTED]> dawn.bowden@assembly.wales  
**Subject:** RE: Ffos-y-fran Mining Operation

Hi Judith,

They worked coal for about 9 days past their planning consent; we have photographic evidence. I haven't confirmed whether they've stopped coaling today, but it has been very quiet down here.

Sorry to ask, I'm not sure of all the status terms in the planning process. When you say 'for consideration', what is the status of the application? Has the application been 'validated' as yet? I need to know when the clock is ticking for objections, and what date we are aiming for to get them in by, and what date we can expect it to be 'determined' after that. I have checked the MTCBC Planning Portal and the **Application Validated** date on there is **1st September**.

Chris Austin

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**From:** Jones, Judith (Planning & Neighbourhood Services) [mailto:[REDACTED]]  
**Sent:** Tuesday, September 20, 2022 4:31 PM  
**To:** Chris Austin  
**Cc:** Barry, Andrew (Councillor); Jones, David (Councillor)  
**Subject:** RE: Ffos-y-fran Mining Operation

Hi

We currently have an application before us for consideration, we will continue to monitor operations at the site until that application is determined.

Regards

Judith Jones BA Hons Town & Country Planning, BTP, MRTPI  
Cyfarwyddwr Gwasanaethau Cymdogaeth/ Director of Neighbourhood Services  
Cyngror Bwrdeistref Sirol Merthyr Tudful / Merthyr Tydfil County Borough Council

 Ffon / Phone: [REDACTED]  
 E-bost / Email: [REDACTED]  
 Rhyngrwyd / Web: [www.merthyr.gov.uk](http://www.merthyr.gov.uk)

**From:** Chris Austin <[REDACTED]>  
**Sent:** 15 September 2022 12:30  
**To:** Jones, Judith (Planning & Neighbourhood Services) <[REDACTED]>  
**Cc:** Barry, Andrew (Councillor) <[REDACTED]> Jones, David (Councillor) <[REDACTED]>  
**Subject:** RE: Ffos-y-fran Mining Operation

Hi Judith,

thanks for that, but that now means that the mining company are currently working without planning consent.

They are coaling, not just restoring, so are now in contravention of Condition 3 of their planning consent.

As the Section 73 request hasn't been determined or approved yet then they are working illegally.

Could you please inform me of what action MTCBC are going to take on this matter?

Many thanks,

Chris Austin

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**From:** Jones, Judith (Planning & Neighbourhood Services)  
[mailto:[REDACTED]]  
**Sent:** Thursday, September 15, 2022 12:16 PM  
**To:** Chris Austin  
**Cc:** Barry, Andrew (Councillor); Jones, David (Councillor)  
**Subject:** RE: Ffos-y-fran Mining Operation

Thank you for your email.

The Planning permission that has been implemented permitted coaling until 6<sup>th</sup> September 2022.

A Section 73 application has been submitted, which seeks to vary the conditions attached to the original permission, to enable the mine to continue operating for a further 9 months. We are currently considering that application and it will be determined in due course.

The application P/22/0237 can be viewed via this link [Simple Search \(merthyr.gov.uk\)](#)

Regards

Judith Jones BA Hons Town & Country Planning, BTP, MRTPI  
Cyfarwyddwr Gwasanaethau Cymdogaeth/ Director of Neighbourhood Services  
Cyngor Bwrdeistref Sirol Merthyr Tudful / Merthyr Tydfil County Borough Council

**From:** Chris Austin [REDACTED]  
**Sent:** 12 September 2022 18:02  
**To:** Jones, Judith (Planning & Neighbourhood Services) [REDACTED]  
**Cc:** Barry, Andrew (Councillor) <[REDACTED]> Jones, David (Councillor) <[REDACTED]>  
**Subject:** Ffos-y-fran Mining Operation

Judith,

it was our opinion that the Ffos-y-fran Mining Operation was to stop coaling around about now, but they are still mining and distributing coal today. Could you confirm the exact date that they are to stop coaling?

Also, they were now supposed to be moving into a final restoration phase, but they are tipping spoil on top of the large overburden mound opposite the railhead. Shouldn't any spoil now be directed to filling in the hole, not be extracted and tipped outside of the mine?

Could you please confirm our understanding of things, or provide us with any reasons why they should still be coaling?

It has been brought to our attention that they will be applying to vary their planning consent to the tune of an extra 9 months coaling, but surely, until that planning variation is approved they should not be allowed to operate?

Many thanks,

Chris Austin  
Resident - Incline Top

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