

## **1. UNAUTHORISED DEVELOPMENT – EXTRACTION OF LIMESTONE AND THE STORAGE/DEPOSIT OF QUARRY WASTE OTHER THAN IN ACCORDANCE WITH THE PLANNING PERMISSION REF 1898/9/69, LONGSTONE EDGE (BACKDALE) (MIN 2382/DGB)**

### **Introduction**

Following the visit to the site (Backdale) by Members of the Planning Control Committee on 11 June 2004, and the receipt of the consultant's draft report and further legal advice from Counsel, a report seeking authority for enforcement action was presented to Planning Control Committee in June. Before the June Planning Control Committee a letter was received on 17 June from the Solicitors acting for the landowner which was stated to be in accordance with the pre-action protocol for Judicial Review. The letter was summarised for the Committee. The Head of Law stated that a formal response had to be made within the time period allowed. She therefore advised Members to defer the decision on proposed enforcement action to allow advice to be taken on all issues.

The letter of 17 June challenged proposed enforcement action on the grounds that, among other things:

- a) The proposed enforcement action was not legitimately expedient in that no material grounds had been made out.
- b) The Authority had acquiesced in winning and working minerals for more than a decade but had taken no steps to enforce.
- c) The Authority has recently granted planning permission at the western end of Longstone Edge, whose implementation is far more visually obtrusive and inimical to the Authority's policy compared with the activities at Backdale. This is unfair and unreasonable.
- d) Any restrictions on existing operations or any attempt to prevent future development would be unjustified in principle and counterproductive in practice.

A formal response to the letter has been sent, with the advice of Counsel, dealing with and discounting all these points and indicating that the Authority was not prepared to further defer its consideration of whether to take enforcement action at Backdale.

Other recent reports on the matter have been presented to the Planning Control Committee in November 2003, and in March and April 2004.

As this item relates to an enforcement issue, if members wish to discuss the matter in detail then consideration should be given to excluding the public from the meeting to avoid disclosure of exempt information. That is information obtained or action to be taken in connection with legal proceedings under schedule 12A of the Local Government Act 1972, paragraph 12, "information relating to legal proceedings". In particular any advice from the Head of Law on a possible Stop Notice would need to be covered in Part B.

### **History**

Longstone Edge is covered by a number of mineral planning permissions, including the 1952 planning permission, principally for the extraction of vein minerals. Limestone can also be removed from certain areas. The 1952 planning permission covers the eastern end of Longstone Edge of which Backdale forms part. The extent of the Longstone Edge site is set out on the attached plan.

In 1988 the Authority received allegations that limestone aggregate was being removed from Backdale. Crushing equipment was brought onto the site and processing and sale of aggregate took place. The Authority attempted without success to obtain geological information and a working scheme from the operating company to justify the removal of limestone. Subsequently the operating company went into receivership and the leasehold of the site was acquired by RMC in July 1996.

In February 1996 the Longstone Edge site was listed as 'active' under the provisions of the Environment Act 1995. A scheme of conditions was required to be submitted by the 1 February 1997. This was extended by agreement to 1 April 1997. A scheme was provided by RMC covering the whole of the site. The scheme identified a 15ha working area at Backdale. In this area working was proposed to depths of 60m. The Company contended that this was the only economical method to extract vein minerals from the small veins found within the area. The development would also release significant quantities of limestone. The scheme also included working plans for other areas of Longstone Edge under the control of another landowner/operator (Laporte Minerals).

No environmental statement was submitted with the scheme. The Authority sought the submission of an environmental assessment following the legal decision of R v North Yorkshire County Council ex-parte Brown and Cartwright. RMC declined to provide an environmental statement. Faced with either, a claim of 'deemed approval' or making an unlawful decision, the Authority made a 'without prejudice' determination of the conditions on 17 February 1998.

The conditions attached to the determination were significantly more restrictive than those proposed by the applicant, RMC, and included conditions to the effect that no limestone or any other mineral should be removed other than the minimum amount inextricably mixed with the vein minerals. The Authority also resolved to take enforcement action against working that was taking place and was considered to be outside the scope of the 1952 planning permission, including the serving of a stop notice. This was never acted upon. Bleaklow Industries Ltd (the landowner over the Backdale area of the Longstone Edge site) subsequently applied for judicial review on the basis that the Authority's determination had affected the asset value and viability of the site. Bleaklow Industries Ltd then added an additional ground that the determination was unlawful, as no environmental assessment had been undertaken.

In the High Court leave to apply for judicial review was granted by Collins J. In giving judgement, he gave the opinion, obiter, that the 1952 planning permission should not be read as a limestone quarrying permission but no transcript is available. Subsequently the Authority submitted to judgement on the point that the determination was unlawful, and the determination was quashed.

Since that time RMC expressed the view that it did not wish to continue working the site, withdrawing from the site in April 1998 and giving formal notice in writing that it did not intend to continue with the Environment Act submission. Legal disputes then ensued between RMC and Bleaklow Industries Ltd. Recent correspondence indicates that an agreement has been reached whereby Bleaklow Industries Ltd now act as RMC's agent, with the Environment Act submission being retained in the name of RMC. Additional information, including the provision of environmental information is still sought by the Authority to enable the Authority to make a lawful determination. The Authority's latest request for the additional information requires the information to be submitted by 2 November 2004.

In the interim Glebe Mines Ltd, (successors of Laporte Minerals) submitted a consolidating application for the extraction of vein minerals and limestone, over a 15 year period, from the western end of Longstone Edge in 2000 (see attached plan). The Planning Control Committee subsequently resolved to approve the application in 2002, subject to the signing of a S.106 legal agreement, which included the revocation of all the old mineral planning permissions within the consolidating application area. The legal agreement has recently been signed and the planning decision notice issued.

In addition, in June 2003 a planning application was submitted by Glebe Mines Ltd to extract vein minerals at Winster. In subsequent negotiations between officers of the Authority and the applicant, the applicant offered not to work the freehold vein mineral rights (which also includes the rights to the limestone dislodged during the extraction of vein minerals) that it owns over a substantial area of the eastern end of Longstone Edge, north of the unclassified county road passing over Longstone Edge. The Authority resolved to grant planning permission for the development at Winster, but referred the application to the Office of the Deputy Prime Minister

(ODPM) as a 'departure' application. The ODPM has recently advised that it does not wish to 'call-in' the application leaving it open to the Authority to issue the decision notice. This decision notice will be issued subject to the signing of a S.106 agreement containing Glebe Mines Ltd's offer not to work the vein mineral rights and not to seek compensation in the event of a Revocation Order being served. The agreement has yet to be signed.

In July 2003 it came to the Authority's attention that a new operator had arrived on-site and commenced working at Backdale. A letter was sent to the operator, Merriman's (MMC Ltd), with a copy to the landowner Bleaklow Industries Ltd, drawing attention to the terms and conditions of the 1952 planning permission; advising that in the opinion of the Authority the primary purpose of the planning permission was for the extraction (by removal of surface deposits, opencast working or underground mining) of fluorspar, barytes and lead (vein minerals); and the other minerals (limestone) could only be worked in the course of working the vein minerals; and requesting information on the quantity and ratios of the minerals extracted and proposed to be extracted.

In response, MMC Ltd confirmed its intention to work the site under the terms of the 1952 planning permission, but could not provide details of the quantity of minerals to be won since the geological information was insufficient. Bleaklow Industries Ltd, responded by stating that the lessee was contractually obliged to comply with the terms of the 1952 planning permission. Bleaklow considered there was no case for enforcement action and referred to the Authority's previous attempts to stifle lawful activity and the resultant High Court action. Any subsequent attempt by the Authority to prevent lawful activity would be resisted in a similar fashion.

Due to the past history, significant profile and legal complexities of the issues surrounding this site, counsel's opinion was sought. The initial action recommended by counsel was the serving of planning contravention notices (PCNs) to obtain information on the activities taking place. The PCNs were served in mid December 2003.

The PCN received from MMC Ltd indicated that since August 2003 around 6,000 tonnes of fluorspar has been won and is stockpiled at the site. Around 72,000 tonnes of limestone has been won from the site, with sales of 40,966 tonnes and stockpiles of 21,000 tonnes. In the PCN, MMC Ltd confirm that it is their intention to sell any fluorspar won at the site but have so far been unable to secure a satisfactory arrangement with the fluorspar processing company (Glebe Mines Ltd). MMC Ltd has stated that it has plans to develop an on-site fluorspar processing facility once the enforcement issues have been resolved.

MMC Ltd and Bleaklow Industries Ltd consider that working is taking place in accord with the working scheme set out in the 1997 Environment Act submission (which remains to be determined), but then go on to say that details of a scheme of working the site are still in the course of production. MMC Ltd asserts that the extraction of limestone is in accord with their interpretation of the 1952 planning permission, and that they do not consider that the limestone won from the site must be ancillary or incidental to the extraction of fluorspar.

In March 2004 MMC Ltd with a view to extending the operations northwards, moved the perimeter fencing and in doing so obstructed the county road passing to the north of Backdale. The Highway Authority with Police involvement secured the re-opening of the county road. At the same time Glebe Mines Ltd advised MMC Ltd and Bleaklow Industries Ltd, that it owned the vein mineral and the limestone disturbed as a result of working the vein mineral within the area to the north of the county road. No lease had been granted by Glebe to MMC Ltd or Bleaklow Industries Ltd. If MMC Ltd or Bleaklow Industries Ltd commenced working in this area Glebe Mines Ltd would serve an injunction.

## **Comment**

Concerns have been expressed by a number of parties, both in the past and recently, over the quantity of limestone being extracted and removed from Backdale, and whether this activity was in accord with the terms and conditions of the 1952 ministerial planning permission ref. 18998/9/69 that is attached to the land.

The 1952 planning permission grants planning permission for:

“the winning and working of fluorspar and barytes and for the working of lead and any other minerals which are won in the course of working these minerals by turning over old spoil dumps, by opencast working and by underground mining within the areas shown outlined in black excluding the area cross-hatched on the attached plan...” The permission was subject to 6 conditions.

The application and the permission make it clear that what was to be worked lawfully were the minerals named in the permission, namely fluorspar and barytes and lead and “other minerals won in the course of working the named minerals.” The permission is not therefore for limestone extraction except where it is won in the course of working the other minerals. How much limestone needs to be worked may be a matter of judgement but applied within reasonable bounds.

To assist in making a judgement, information has been sought from the operator and the landowner, through the serving of Planning Contravention Notices over the extent of the operations and the quantity and type of mineral extracted, stored and sold from the site between July 2003 and December 2003. Advice and assistance has also been provided by counsel and via a geo-technical consultant.

The geo-technical consultant’s report concludes that considerably more limestone has been removed than is necessary to work the amount of fluorspar and/or barytes recovered. The consultant estimates that high volumes of limestone and relatively low volumes of fluorspar have been extracted. As a result it is considered that what has been carried out is in breach of planning control.

Condition 3 of the planning permission requires that waste material is deposited in the hollows left by old workings. However, waste is also being disposed of above natural ground level in breach of the condition. This is a further breach of planning control.

Where there has been a breach of planning control a local planning authority must consider whether it is expedient to take enforcement action having regard to the provisions of the development plan and to any other material considerations.

Policy GS1 of the Structure plan states that all development will be controlled so that the valued characteristics of the National Park can be conserved and enhanced. Policy M2 goes on to specify that all proposals for mineral extraction will be strictly controlled and that all proposals should be in the public interest and that no reasonable alternative source site or means of production less damaging to the national park is available. Policy M3 advises that major development will not be permitted other than in exceptional circumstances in which the Authority is convinced that it is essential to meet a national need that overrides the national policy to protect the national park. As the development has been carried out in breach of planning control it has not been subject to strict controls. The development being undertaken is considered to be major development. There is considered to be no national need for the mineral (limestone) to be worked from this area that overrides the national need to protect the National Park. Alternative sources and means of production are available. Consequently it is not considered to be in the public interest to allow the development to take place.

Policy C2 advises that development that would not respect, would adversely affect, or would lead to undesirable changes in the landscape or the valued characteristics of the area would not normally be permitted. Policies M7 and LM1 require that for mineral extraction proposals the applicant must show the methods of operation will minimise the impacts on the valued characteristics of the National Park. The development being carried out is not in accord with the conditions of the 1952 planning permission. The operator or landowner has not provided any evidence to show that the method of operation used minimises the impact on the National Park. The operation is resulting in undesirable changes in the landscape. The site is crossed by

footpaths and an un-surfaced county road and is visible from many public vantage points. The development is considered to be generating levels of noise and disturbance, including the effects of lorry traffic, which adversely affects the valued characteristics of the area and the quiet enjoyment of the area by local residents or visitors. There is concern over the effect of the development on the stability of adjoining land. There is also concern over the effects of the development on ecological and archaeological interests and the water environment. Overall the development is considered to have a damaging effect on the valued characteristics of the National Park.

It is not considered that there are any material considerations that would outweigh the harm to the valued characteristics of the National Park.

### **Conclusions**

Having regard to the provisions of the Development Plan and other material considerations it is considered that enforcement action should be taken to remedy the breach of planning control, to protect the valued characteristics of the National Park.

### **Human Rights**

Any human rights issues have been considered and addressed in the preparation of this report.

### **RECOMMENDATION:**

**That ENFORCEMENT ACTION be taken against the winning and working of limestone in the area shown cross hatched on the plan accompanying the report other than in accord with the planning permission ref 1898/9/69; and the storage/disposal of waste materials at the site other than in accordance with condition 3 of planning permission ref 1898/9/69.**

List of Background Papers (not previously published)

Nil.