

AGENDA ITEM No. 4

PEAK DISTRICT NATIONAL PARK AUTHORITY

PLANNING COMMITTEE

20 JANUARY 2006

**JOINT REPORT OF THE DIRECTOR OF CONSERVATION & DEVELOPMENT
AND THE HEAD OF LAW**

URGENT BUSINESS

PART A

1. BACKDALE QUARRY, LONGSTONE EDGE (MIN.2382/BP/DGB)

This report has been brought as an urgent item, following a resolution by the Authority at the Authority meeting on 13 January 2006, because of the serious landscape damage occurring at Backdale. It was not possible to prepare a report in sufficient time for the matter to be placed on the agenda.

Purpose of Report

At the Authority meeting on 13 January 2006 Members resolved that they were minded to issue a stop notice subject to consideration of a cost/benefit assessment. They asked that a full report, including a cost/benefit assessment, be made to Planning Committee on 20 January 2006 for a decision on whether to issue a stop notice.

History

- A 1952 planning permission granted by the Minister of Housing and Local Government allows 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 those minerals.
- Concern over the scale and extent of limestone extraction and processing was first raised in 1989. After protracted negotiations and discussions and the threat of enforcement action the then operator ceased work at the site in 1998.
- Bleaklow Industries, the owner of the land and the mineral rights, brought in a new minerals operator, MMC Minerals Processing Ltd, who began quarrying at Backdale in July 2003.
- It is the Authority's opinion that limestone is being extracted beyond the scope of the 1952 permission. In August 2004 the Planning Committee resolved to take enforcement action and an enforcement notice was issued on 23 November 2004. This required that the "winning and working of limestone other than the working of limestone where it is ancillary to the working of fluorspar and barytes" should cease.
- Appeals were lodged against the enforcement notice by both the landowner and quarrying company. The Authority had pressed for as early a hearing as possible but the Planning Inspectorate set dates for a public inquiry for 14-16 September 2005. The planning inquiry opened in September 2005. Four parties were represented: the Authority, the landowner, the quarrying company, and joint representation by the Campaign to Protect Rural England and the Save Longstone Edge Group, who object to the quarrying. The Inspector concluded that up to 9 days in total could be required.

- Counsel for the landowner resisted any early dates for resumption of the inquiry because of his lack of availability. The Inspector then fixed the hearing for 7 days commencing 4 April 2006. He also fixed dates of 6 and 7 June 2006 in case additional days were needed.
- Since the inquiry was adjourned the Authority has sought counsel's advice on what action it could take to restrict quarrying pending resolution of the enforcement proceedings. It has also sought financial support from Defra. Confirmation of Defra's support was received on Thursday 12th January 2006.
- The quarrying company is continuing to extract stone from Backdale at a very significant rate causing damage to the landscape which is irreversible. Since the inquiry further crushers have been brought onto the site.

A copy of the report to Planning Control Committee on 20th August 2004 which sets out the planning issues and history of the site in more detail is attached as an appendix.

Representations

The Authority has received many representations from lobby groups and members of the public urging that action be taken to stop the quarrying. Representations have also been received from the quarry owners and operators pressing the Authority to consider an alternative solution. The correspondence is attached to this report.

Legal Background

There is a dispute about the interpretation of the 1952 planning permission.

The enforcement notice will not take effect until the final decision on the enforcement appeal, including any further appeals from the Planning Inspector's decision to the higher courts.

S183 Town and Country Planning Act 1990 provides that a local planning authority may serve a stop notice where they consider it expedient that any relevant activity should cease before the expiry of the period for compliance with an enforcement notice.

Government advice on the use of stop notices is contained in DOE Circular 10/97. This states that a stop notice's requirements should only prohibit what is essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm in the environment in the surrounding area. It also states that the effect of serving a stop notice will be to halt the breach of control almost immediately and the LPA should therefore ensure that a quick but thorough assessment of the likely consequences of serving a stop notice is available to the Committee or officer who will authorise service of the notice. The assessment should examine the foreseeable costs and benefits likely to result from a stop notice.

Advice on legal issues and risks was given to Members in a Part B exempt report to the Authority meeting. Because legal proceedings are in progress any further legal advice requested by Members may have to be given as exempt information in Part B.

Cost/Benefit Assessment

Officers have written to the owners and operators of the quarry to ask for their comments on the effect on their business of a stop notice. 7 days were given for a response but at their request a further period of time was allowed, making 14 days in total, with a deadline of 18 January 2006. Their letters in response are attached. Any further representations will be reported to Members at committee.

Costs

The businesses directly involved in the Backdale site are those of the landowner Bleaklow Industries Ltd (Bleaklow) and the operator MMC Mineral Processing Ltd (MMC). MMC have a mineral lease over the Backdale area.

As the Authority has not received information directly from the companies involved officers have estimated the costs to the businesses from the information available, including information on the companies' websites and registered company accounts.

According to the MMC website the main focus of the company is the production of high specification aggregates and sand used in the making of high strength concrete and road construction materials. MMC was formed in 1998 as a joint venture with Merriman Ltd. The company was primarily involved in processing sands and aggregates for large aggregate producers around the country. MMC have continued with this service and have expanded with the acquisition of substantial reserves of hard rock, sand and gravel, high polished stone value gritstone and now operate on those sites. The MMC group includes three other companies, Bodmin Block (acquired in 2004), Aggregates & Minerals and Cornish Rustic Stone (both acquired in 2005). MMC are able to provide a long term supply of aggregates and products through the use of Par Docks in Cornwall. Most of the information provided centres around operations in Cornwall. There is no mention of the operations at Backdale on the MMC website. It is unclear how important financially the operations at Backdale are to MMC.

From the company accounts it would appear that whilst MMC has substantial assets, it also has a high level of debt and the company is not profitable. This may be the result of recent company acquisitions. The accounts indicate that there is ongoing support from Merriman Ltd, the 50% shareholder in MMC. Merriman Ltd., which is a profitable company, are acting as guarantor over the debts of MMC.

The Bleaklow website indicates that the company supplies lime mortars and plasters. According to the company accounts for 2004 the company appears to be profitable, although it is owed a substantial sum of money by debtors. Within the accounts there is reference to the freehold transfer of property rights from the original Bleaklow Industries Ltd in 1988 at a directors valuation of £151,000. The original cost of this land was £26,598. According to the accounts the director is not aware of any material change in this valuation, and therefore, the valuation has not been updated. It is unclear from the company accounts how much income is made directly from the rent and royalty payments arising from MMC's activities on the freehold land at Backdale.

The minerals currently being worked (with or without permission) are fluorspar and limestone used for aggregate purposes.

The perception of the Authority's officers and the general public is that output of limestone has increased significantly in recent months. Additional crushers have been installed on the site and have the potential to increase the amount of crushed stone available for sale.

Output of fluorspar was claimed by Bleaklow and MMC to be 6,000 tonnes in 2003 and an additional 4,000 tonnes up to February 2005. The information available to the Authority suggests that none of the fluorspar extracted since 2003 has been sold from Backdale since the principal vein mineral processing company has declined to accept the ore. Output of limestone from Backdale was estimated to be in the order of 298,000 tonnes in 2004/5.

The Authority has no information on the revenues and costs of operating the site. There is currently no market for the unprocessed fluorspar from this site. The limestone is sold as aggregate. The limestone is worked in comparatively high volumes and processed using mobile plant. Whilst processing costs are likely to be low the product is likely to secure a relatively low price.

As the processing plant is mobile it could be moved from Backdale for use elsewhere. There would be costs associated with the removal, relocation and re-commissioning of the plant. There are assumed to be 5 people directly employed at the site. Some of these could be retained to operate within the part of the site not included in the stop notice, to work the site in accord with the terms of the 1952 planning permission. Some may be re-deployed by the company to work elsewhere. It is possible that some may be made redundant with associated redundancy costs, although the Authority has no evidence that this is the case. Both Bleaklow and MMC have stated that operations could be transferred to other areas within the 1952 planning permission.

Haulage contractors are used to transport the mineral to markets. The haulage firms could be contracted by the company to transport minerals obtained from other sites. The Authority has no information on existing contracts. However, the operating company could source aggregate materials from elsewhere to meet the contracts. There are a number of operating sites within the immediate locality that could supply similar products to that arising from Backdale. Cost of purchasing from these alternative sites may be higher.

Based on available information an independent valuer estimates that the maximum monthly net profit lost by the landowner and operator combined is likely to be in the region of £70,000. This is a maximum figure and could be mitigated by the different working options referred to above.

If working is prevented at Backdale the operators may move to prominent areas at Wagers Flat or Beacon Rod that are also covered by the 1952 permission. If that occurs, investigations would need to take place to monitor whether unlawful activity may be occurring, with a view to considering whether to take enforcement action. The risk of provoking landscape damage on the southern slopes of Longstone Edge is therefore a further matter to take into consideration.

Benefits

The mineral extraction operations at Backdale have had a significant adverse effect on the landscape and amenities of the locality.

Backdale is situated at the eastern end of Longstone Edge, a prominent ridgeline feature within the National Park. The mineral operations have cut into the southern slope of the ridgeline. Since July 2003, when MMC moved into the site, limestone extraction from the site has accelerated, increasing the extent of the quarry. Recent operations have removed further parts of the hillside, involving the loss of trees. The operations have given rise to a significant number of complaints from members of the public, concerned over the damage to the landscape, the visual impact of the operations and disturbance to local amenities through noise, dust and lorry traffic.

Complaints have been received from residents of Hassop parish over the noise and general disturbance arising from the extraction operations at Backdale. Complainants refer to operations commencing in the early hours of the morning (5:00am) working a 13 hour day, with operations also taking place on Saturdays and Sundays. Residents of Calver village and other villages in the immediate locality are subjected to increased disturbance from lorry traffic associated with the development. A local action group has been established to voice concerns of the local residents about the detrimental impact the mineral operations are having on the environment and amenities of the locality.

The area is located in the heart of the Peak District National Park popular with visitors who are attracted by the designated landscape, wildlife and cultural heritage features. The local villages offer a number of attractions. Bakewell is in close proximity, as is Chatsworth and its associated attractions. The footpath network over Longstone Edge and the surrounding areas are frequently used.

The mineral extraction activities have also affected an un-surfaced county road and a public footpath. During 2005 additional crushers were installed increasing the potential rate of working at the site.

An accelerated rate of working due to limestone extraction will increase the extent of the operations further with consequential impacts on the landscape and visual amenities. There would also be consequential impacts on the level of noise and general disturbance from the operations on local residents and visitors including the detrimental effects arising from additional lorry traffic. Increased levels of working further prejudice the ability to satisfactorily restore the site due to the void of the quarry extending to and a greater lateral and vertical extent. Serving a notice would prevent further irreversible damage occurring to the designated landscape and protect the amenities of the area, for local residents and visitors. It is not possible to put a price on the National Park landscape.

Financial Issues

S186 of the Town and Country Planning Act 1990 provides that a local planning authority could be liable to pay compensation in respect of a stop notice if an enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn. However no compensation is payable in respect of the prohibition in a stop notice of any activity which at any time when the stop notice is in force constitutes or contributes to a breach of planning control. The Authority considered the risks and financial issues at the Authority meeting on 13th January 2006 and resolved that it was minded to issue a stop notice subject to a full report, including a cost/benefit assessment, being brought to Planning Committee. The Chief Finance Officer has been consulted during the cost/benefit assessment and confirms his support for the approach now proposed.

Human Rights aspects including Equal Opportunities, Health and Safety

Article 8 of the European Convention on Human Rights provides that everyone has a right to respect for his private and family life, his home and correspondence.

Article 1 of the First Protocol to the Convention provides for the right of persons to peaceful enjoyment of their possessions.

These are qualified rights and it is necessary to consider whether the action proposed, in this case the issuing of a stop notice, is proportionate. It is a matter of balancing the competing interests of the quarry operators and owners as against those of individuals in the local area personally affected by the quarrying and the community as a whole.

Conclusion

The Authority has to consider whether it is expedient to issue a stop notice to require limestone extraction to cease before the final outcome of the enforcement appeal proceedings.

Having considered the costs and benefits of serving a notice, your officers conclude that the benefits of stopping the damage by serving a stop notice outweigh the cost to the operators and owners and to the local economy. Although no information has been provided directly by MMC, the information on their website suggests that the effect on the company will not be hugely significant, and it is officers' view that a large number of employees are unlikely to be affected. Both MMC and Bleaklow will be entitled to claim compensation for financial losses they have suffered in the event that the Authority's actions in serving the stop notice are not supported on appeal. By contrast the damage to the environment of the National Park is irreversible. Since the Inspector adjourned the inquiry in September additional crushers have been brought on to the site and the working has carried on at a significant rate. It is likely to be at least 6 months before a decision is obtained from the Planning Inspectorate, with further delay if there is a High Court challenge. There is therefore scope for substantial further landscape and amenity damage before the matter is finalised. It is your officers' view that it is therefore expedient to serve a stop notice to protect the environment in the meantime. However, Members will need to

make their own assessment of the expediency of issuing a stop notice, taking into account the matters set out in this report.

It is proposed that if a stop notice is to be issued it should prevent the winning and working of limestone at the Backdale site, other than in accordance with the Authority's interpretation of the 1952 permission. A plan of the approximate area where limestone extraction would be prohibited is hatched black on the plan attached.

A stop notice must give a minimum of 3 days and maximum of 28 days from service of the notice for compliance. A lesser period may be given if the local planning authority considers that there are special reasons for specifying an earlier date and a statement of reasons is served with the stop notice. In the present case it is felt that 3 days would be appropriate.

RECOMMENDATION:

That a stop notice be issued to require the winning and working of limestone at Backdale to cease 3 days from the date of service of the notice in the approximate area hatched black on the attached plan.

List of Background Papers (not previously published)

Registered company accounts and returns for MMC Mineral Processing Ltd
Registered company accounts and returns for Bleaklow Industries Ltd
Letter from mineral valuer