Appeal Decision

Inquiry opened on 13 February 2007

Site visit made on 26 February 2007

by David Baldock **MA DipTP DMS MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Date 26th. April 2007

Appeal Ref: APP/M9496/C/06/2017966
Land at Backdale, Hassop, Longstone Edge

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Bleaklow Industries Limited against an enforcement notice issued by the Peak District National Park Authority.
- The Authority's reference is NAW/B242/MIN2382.
- The notice was issued on 5th May 2006.
- The breach of planning control as alleged in the notice is the winning and working of limestone other than in accordance with planning permission 1898/9/69.
- The requirements of the notice are to cease:
  - (a) in the area shaded grey on the plan attached to the notice, all the winning and working of limestone;
  - (b) in the area outside the area shaded grey but within the notice area, the winning and working of limestone other than the working of such limestone as is won in the course of working fluorspar and barytes.
- The period for compliance with the requirements is one day.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal Ref: APP/M9496/C/06/2018130

- This is an appeal made on the same grounds by MMC Mineral Processing Ltd. All details are identical to those on the appeal by Bleaklow Industries.

Summary of Decision: The appeals succeed in part on ground (f) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

1. PRELIMINARY MATTERS

1.1 At the Inquiry an application for a partial award of costs was made by Bleaklow Industries Limited [BIL] against the National Park Authority [NPA]. This application is the subject of a separate Decision.

1.2 The evidence of those witnesses which it was expected might include matters of personal recollection (rather than record or professional opinion) was taken on oath. These were Mr Harpley, Mr Taylor, Dr Furness and Mr Tippett.

1.3 The inquiry sat for ten days between 13th and 28th February. My site visit was carried out on 26th February 2007. In addition to visiting the appeal land I travelled along

Bramley Lane, observing the area known as Peak Pasture, went on to the workings of MMC Mineral Processing [MMC] at Wagers Flat, and looked from public viewpoints at restored workings of Deep Rake and ongoing workings by Glebe Mines including of Bow Rake, High Rake and at Arthurton West.

1.4 The appeal notice followed the issue of a notice affecting the same area on 23rd November 2004. I held a pre-inquiry meeting in connection with appeals against that notice on 8th February 2006. That notice was subsequently declared a nullity by the Inspectorate on 30th March 2006, prior to the resumption of the inquiry in April. No pre-inquiry meeting was held prior to the instant inquiry but I issued two notes dealing with issues and procedure, numbered IN1 and IN2. IN1 sought specific clarification of certain matters from the main parties[1].

1.5 The Save Longstone Edge Group [SLEG] and Campaign to Protect Rural England [CPRE] appeared at the inquiry having been required to submit statements in accordance with Rule 6. At the inquiry I explained that I would only hear additional third party witnesses where reliance on written submissions would not be adequate and that this written evidence would be given full weight. I also agreed to accept further written submissions and received a good number during the inquiry. Only if cross examination, and potentially evidence on oath, was to be expected would it have been necessary to hear further evidence. For this reason I heard Dr Furness on matters of fact. I also heard Mr Tippett, following a commitment given some months before the inquiry.

1.6 During the inquiry the NPA sought to introduce a revised enforcement notice plan increasing the area subject to requirement (b). The appellants opposed this but I agreed to consider it and hear the cases relating to the amendment. A summary of this ruling is at Document BIL6.

2. SITE VISIT

2.1 This was an opportunity to see the general character of the site. There is a portacabin and processing works which I did not inspect operated by BIL. Nearby is external storage for this slaked lime business which is wholly independent of the mining operations carried out by MMC.

2.2 Various benches were visible in Deep Rake towards the north-west corner of the site, including a bench accessed by a ramp constructed of spoil. Within the main quarry were three stockpiles, said to be crushed and uncrushed ore from Backdale and ore from Wagers Flat.

2.3 Although I asked to have my attention drawn to any agreed mineral veins visible on the land, none were noted in Deep Rake. Southern Vein was seen above the quarry floor but it was uncertain how far this contained fluorspar, calcite or clay. It was not possible to accurately pick out the boundaries for area (b) in the requirements of the notice proposed by the NPA.

2.4 The Peak Pasture area was observed from the highway. Some rakes are distinguishable due to a combination of features, such as minor changes in level, planting and the relationship to boundary features.

[1] "Main parties" means the appellants and the NPA

3. PLANNING HISTORY

Table 1. Summary of principal relevant planning history

Date	Event	Document
24.04.52	Planning permission 1898/9/69 granted. The area of the permission includes the appeal land (about 12 hectares) and land to the west, east and north totalling some 155 hectares.	NPA9 and 10.
February 1996	A 370 hectare site at Longstone Edge including the area of the 1952 permission was listed as an "active" site under the Environment Act 1995.	
March 1997	Application by RMC Roadstone in conjunction with Laporte Minerals for determination of conditions under the Environment Act 1995 for the Longstone Edge site [the ROMP scheme]. Although affecting the whole of the listed site, a detailed scheme of working for a 15 year period applied to part of the appeal site and land to the north (Peak Pasture).	NPA15.
17.02.98	NPA issue determination of conditions and working rights notice.	NPA16.
April 1998	RMC cease working at the appeal site.	
1999	Determination of conditions quashed by the High Court on the application of BIL.	
04.07.03	Lease by BIL to MMC and Merrimans – area of lease includes much of the appeal site and Peak Pasture.	BIL5. Plan at NPA26.
23.11.04	Enforcement notice affecting the appeal site – declared a nullity on 30th March 2006.	NPA1.
24.01.06	Stop notice to take effect on 29th January 2006.	NPA51.
07.04.06	Temporary stop notice.	NPA80.
08.05.06	Stop notice.	NPA55.

3.1 The ROMP submission remains undetermined. RMC has authorised BIL to progress this as its agent. The NPA is awaiting a full Environmental Impact Assessment.

3.2 Consideration was given to enforcement action at the appeal site in the period 1994-1997 [Documents NPA12 and 17]. Action was authorised but no notice was issued. There was no winning or working between April 1998 and July 2003.

3.3 On 7th September 2004 Glebe Mines entered into a s106 agreement with the NPA in respect of its mineral interests on Peak Pasture, including granting the NPA the option to purchase its vein mineral rights for £1. The agreement was concurrent with a planning permission for mineral extraction at Winster Moor. The application was

made in May 2003 and the authority resolved to grant permission, taking into account the prospective s106, on 28th November 2003. Notice that the First Secretary of State did not intend to call the application in was issued on 22nd March 2004. The permission and the s106 agreement were the subject of a quashing order by the High Court in November 2006 [Document RSH5].

4. INTERPRETATION OF THE 1952 PLANNING PERMISSION

The permission

4.1 The permission is contained in a letter to N Crowther of the Bleaklow Mining Company dated 24th April 1952. There are four preliminary paragraphs setting out the background: the submission of the application, its consideration, what is proposed, and a summary explanation of why permission is being granted. Paragraph 5 reads:

> In the exercise, therefore, of his powers under the Town and Country Planning Act, 1947, the Minister has decided to grant 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 area shown outlined in black, excluding the area cross-hatched, on the attached plan and the tipping of waste materials on the areas shown hatched vertically on the plan, subject to the following conditions:

Conditions 1 and 2 relate to the disposal of waste material from identified rakes at various locations but these do not include the appeal site. Condition 3 is that:

> Waste material other than that referred to in conditions (1) and (2) and other than that tipped in the areas shown hatched vertically on the plan shall be disposed of in the hollows left by old workings, in agreement with the Local Planning Authority, or, in the event of disagreement, as shall be determined by the Minister.

Legal principles

4.2 The approach to the interpretation of planning permissions is well-established in Court judgements and was not disputed. This is founded on the principle that it is the permission which should be relied on unless the exceptions which allow looking outside this apply. The permission includes the conditions and the reasons for those, although there are none of the latter. The reason for this approach is that any background material will not be readily available, so that those seeking to rely on or understand what a permission allows should be able to do so from the permission itself.

4.3 In this case there is a disagreement as to whether it is the whole letter or that part in paragraph 5 beginning "In the exercise" which should be looked to. I am firmly of the opinion that the latter is correct and is plainly so from the obvious meaning of the text. The first four paragraphs read as a background preamble. The phrase "in the exercise … of his powers" is a clearly signalled change of tone. What follows defines what is being permitted. Keene J[2] refers to the "operative part" of a permission and this description would be apt here. In the *Ashford* judgement informative text following the

[2] R v Ashford BC ex parte Shepway DC [1998] EWHC Admin 488, paragraph 27 sub-paragraph 3

conditions and reasons was held not to amend the permission, which was itself not ambiguous. Furthermore it is only this part of the letter which defines what is permitted, whereas the preceding text is essentially descriptive. From the face of the document there is no way of knowing whether the permission was intended to replicate what was applied for. The development permitted is described in the operative text and other explanatory text cannot be assumed to amend or qualify this. Thus except to the extent that there is an ambiguity, it is the operative part of the permission which should be decisive.

Interpretation of the text

4.4 There is no substantial dispute that limestone is a mineral and therefore is included within "any other minerals"[3]. In practice it is the (winning and) working of limestone on the basis of the phrase "working of lead and any other minerals won in the course of working" which is at issue. The effect of this part of the permission could be regarded as unchanged if it read "working of limestone won in the course of working fluorspar and barytes". In order to express the fundamental matters of dispute I have adopted that general approach in the analysis which follows and have also omitted some references to barytes where this does not interfere with the meaning.

4.5 It is not disputed that what is permitted lies somewhere between an unqualified permission to win and work all minerals and a permission to win and work fluorspar and barytes only. It is the definition of that intermediate point within the permission which is critical.

4.6 The terms "opencast working" and "underground mining" are well understood and have not been disputed. The principal difficulties arise where the words "winning" and "working" are used, singly or together, and also with the phrase "won in the course of working". I shall therefore begin by looking at these terms independently, without regard for their context in this decision.

4.7 The words "winning" and "working" were commented upon in the decision of the Court of Appeal in the English Clays case[4]. This was in connection with the interpretation of the Town and Country Planning General Development Order 1963, which contained the phrases "winning and working" and "winning or working". It is pertinent to note that the Order applied to works required "in connection with the winning or working of minerals", implying that winning and working were regarded as distinguishable. The point at issue was whether the Order was applicable to a plant processing clay slurry. Russell LJ stated:

> It is perhaps not necessary to be dogmatic on the point in this case: but our present view is that to "win" a mineral is to make it available or accessible to be removed from the land, and to "work" a mineral is (at least initially) to remove it from its position on the land: in the present case the china clay is "won" when the overburden is taken away, and "worked" when the water jets remove the china clay together with its mechanically associated other substances from their position in the earth or land to a situation of suspension in water.

[3] The definition of minerals in s119(1) of the 1947 Act was similar to that in the 1990 Act and "includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or by surface working …" Limestone is also referred to in the report which preceded the decision [Document NPA8].
[4] English Clays Lovering Pochin Ltd v Plymouth Corporation [1974] 27 PCR 447

4.8 Various dictionary definitions of winning and working have been referred to. There is not a high degree of consistency between sources and in some cases there is an overlap between the definitions of "win" and "work". The Shorter Oxford English Dictionary[5] defines win as "to get or extract (coal, or other mineral from the mine, pit or quarry; also, to sink a shaft or make an excavation so as to reach (a seam of coal or vein of ore) and prepare it for working" and work as "to get (stone or slate from a quarry, ore or coal from a mine, etc) by labour". This illustrates both the potential for overlap but also how each can have a distinct meaning. The terms have to be interpreted in the context of this planning permission. The definitions proposed by Russell LJ are consistent with the everyday use of the words, but applied to the context of mining operations. That seems to me to be entirely appropriate.

4.9 It is pointed out that the comments of Russell LJ were in a different context and were not part of the ratio of the judgement. That does not show that the definitions are not suitable here. A principal argument for the appellants is that the normal usage of the phrase "winning and working of minerals" means to get minerals. This is said to be akin to phrases such as "neat and tidy", such that it is not possible or correct to give a separate and distinct meaning to "winning" and "working". I do not find that argument persuasive. The words "win" and "work" have very different meanings when used separately. I do not accept that they lose such a distinction when used jointly. The same cannot be said for "neat" and "tidy". What is necessary is to assess what they mean in the context of mining and within this decision. A fair reading of this permission is that the words "winning" and "working" were being used to convey a different and distinct meaning. The appellants' argument implies that it would have made no difference to have written "winning", "working" or "winning and working". It is inconceivable that that was the view of whoever wrote this permission and that cannot be the correct starting point in deciding what it permits. The appellants have also argued that the changes in the views of the NPA and its witnesses on this point show a lack of credibility. It was generally accepted that matters of law such as this were points of submission, which were the subject of separate legal submissions from the main parties not directly subject to cross examination. Although arguments concerning credibility have been considered, ultimately it is the language of the permission which must be decisive.

4.10 The critical phrase is "working of … other minerals which are won in the course of working". The case of the appellants is that the permission allows the getting/working of limestone provided that there is an operational nexus between this operation and the winning and working of fluorspar. No attempt is made to provide a definition of what this operational nexus might be, so that the concept is essentially broad and inclusive. Various possibilities are rejected, such as "at the same time as", "ancillary to", or "provided that a particular ratio of fluorspar to limestone is not exceeded". A test that the working of the limestone should be necessary is also rejected.

4.11 The NPA cites two dictionary definitions of "in the course of": "undergoing the specified process" and "during the specified period or activity". The overall meaning is said to be "as a necessary part of the course or process of working". There have also been assessments, especially by the NPA and SLEG, of operations involved in winning and working fluorspar to define how limestone worked at different stages should be

[5] Quoted on page ii of L/BIL/1

treated under the terms of the permission. These are said to build on the definitions of winning and working put forward by Russell LJ. Thus material, including limestone, dug up to make the fluorspar accessible cannot be removed from the site and must be returned to the land. That which can be removed is that which is mechanically associated or inextricably intermingled with the fluorspar and therefore has to be worked in order to work the fluorspar. This is seen as equivalent to "in the course of working". In so far as limestone is dug up which is outside the terms of the permission, it is said this must be replaced on the land and is potentially within the scope of condition (3).

4.12 This is an operational planning permission in which the relevant text is describing the permitted operation. Conditions 1-3 state how the waste material it was anticipated would arise as a result of the permission being implemented should be dealt with. The permission expressly permits: the winning of fluorspar, the working of fluorspar, and the working of limestone won in the course of working fluorspar. It does not expressly permit the winning of limestone. In so far as it permits the working of limestone, this is a qualified permission, limited to that "won in the course of working fluorspar". The nature of that qualification should take account of the context, that is a planning permission for mining development. Thus it an operational qualification and not one concerned with time.

4.13 I have concluded that the highly prescriptive view summarised in paragraph 4.11 and supported by the NPA, SLEG and others cannot be justified from the terms of the permission, although it is not without merit. If that view were correct, it seems to me that the permission to work limestone won in the course of working fluorspar would not have been included at all. That is because the limited working and removal of mechanically associated and intermingled limestone would have been regarded as part and parcel of the permission to win and work fluorspar. In the context of a permission which is phrased in the general language used and without substantial restraining conditions, as was probably typical in 1952, it would be unrealistic to conclude that the language prescribes such a rigid distinction over the manner and extent to which limestone is worked and, in particular, removed from the land. Two other main points support this conclusion. Firstly, I am not satisfied that, when broken down into small scale operations as in the diagrams produced by Dr Cobb and Mr Woods, there is an unambiguous distinction between the removal of limestone to win fluorspar on the one hand and in the course of working it on the other. This is a consequence of seeking to support a highly mechanistic interpretation of the permission whereby particular small scale operations are either within or without its terms, which is not how the permission should be read. Secondly, I regard the identification of the waste material conditions as indicating what should happen to limestone disturbed but not authorised to be removed as more opportunistic than plausible. The conditions do not impose a definition of waste material and it would be stretching their meaning unrealistically to conclude that they are intended to reinforce a restriction on winning and working by requiring excess mineral to be kept on the land. The operator would have discretion to determine whether material disturbed by the lawful operation was, in practical terms, waste which would be replaced on site. Thus the source for what is permitted must be the relevant operative text. However it also follows that the limited scope of the "waste" conditions cannot be used to define the permission, for example by arguing that because limestone is not waste all that is disturbed/removed can be sold. The conditions were drafted in

the context of the scale and nature of the operation that was being permitted and it is this which is fundamental.

4.14 The appellants' view is that limestone may be extracted provided there is an operational nexus with the winning and working of fluorspar. So far as I can judge, the intended meaning seems to be that provided some fluorspar ore is worked, the overall operation involving the formation of benches and the digging out of limestone and fluorspar is authorised. There is no restraint on the relative amounts of limestone and fluorspar removed nor is the commercial value of the fluorspar held to be relevant. It is probably accepted that the ore must be capable of commercial sale, although this may be as a result of blending with richer ore, so that this would have a very limited role in determining what might be regarded as ore at a particular location. This approach makes no particular distinction between winning and working, which is consistent with the view that these words have a single meaning.

4.15 This interpretation, too, is in my view wrong. It closely resembles a permission for the winning and working of fluorspar, barytes and limestone, which is not what is allowed. Furthermore it fails to give rational and credible meaning to the omission from the permission of the winning of limestone and the restraint on its working to that which is won in the course of working fluorspar. The phrase "in the course of" means not just that there is a connection between the activities. It also means that one activity is predominant or primary. How that primary role is demonstrated in a particular case depends upon the context but as the relative scale changes the point occurs where the phrase "in the course of" could not correctly be applied. Although still connected, the two activities would have become equally weighted or their relative weights transposed. Since this permission is defining an operation to work minerals, it is the relative scale of the minerals worked which is determined by the terms of the permission. Value may be a guide to understanding the actions of an operator but it is not the fundamental characteristic of the permission.

4.16 The concept of primary operations, that is the winning and working of fluorspar, and secondary operations, the working of limestone, is not only established by the phrase "in the course of". It also explains and is reinforced by the exclusion from the permission of the winning of limestone (or any other mineral other than fluorspar and barytes). The permission was not intended to allow winning other minerals and, by excluding this, the restriction to minerals won <u>in the course of</u> working was given greater force. That is significant because it confirms that the wording of the permission was deliberate and that the language used is consistent, not contradictory or uncertain.

4.17 The operative terms of the permission must be read both as a whole and with careful attention to individual words and phrases. I have already set out what the permission expressly permits and does not expressly permit in paragraph 4.12. A number of points follow from this. The operations are to be directed at the extraction of fluorspar and barytes. The working (and export) of limestone can occur where this is won in the course of working fluorspar and barytes. There is not express permission to work limestone in the course of winning fluorspar and barytes. To accord with the permission read as I have described the principal minerals removed from the land would be fluorspar and barytes. If the amount of limestone won and worked exceeds that of fluorspar and barytes, this would indicate strongly that the operations are not consistent with the terms of the permission. Since there is no specific formula within

the permission, it is appropriate to adopt an approach in this respect which favours the operator. Approached in this way, a ratio of limestone to fluorspar and barytes ore exceeding 2:1 by tonnage would clearly not accord with the permission[6]. The measured tonnage of fluorspar ore would include any mechanically associated and intermingled limestone only separated during subsequent processing of the ore, which the BGS Factsheet implies could be about one-third of the total. Operations beyond this limit would constitute the (winning and) working of fluorspar, barytes and limestone and not what is permitted.

4.18 BIL argue that economics, practicality and safety are all good reasons why the extraction of limestone could be "in the course of working fluorspar". I reject the direct relevance of economics because the permission is defining an operation and should be interpreted accordingly. I am satisfied that the terms of the permission are directed with this intention, as would have been wholly appropriate. One reason is that values and costs will change so that this could not sensibly be the criterion, nor does the text suggest otherwise. The thrust of this argument is that substantial amounts of limestone may be worked if this is required for reasons of safety and/or practicality. I do not agree that this is what the permission describes and different terms would have been used had this been intended. The appellants have suggested that it may be necessary to "move a mountain" in the course of extracting emeralds, that some of this material may be sold, but that this remains an emerald mine[7]. However whether this should be described as an emerald mine would depend upon the facts of the case, including the quantity of material sold. I am not convinced that there is a useful analogy to this planning permission and the development which has taken place, which must be understood in terms of the principles of planning law, other than to show that the facts of each particular case need to be examined.

4.19 BIL consider that the permission would allow ancillary or related activities or what might be *de minimis*. This is raised principally to support the argument that the NPA's restricted view of what is allowed excludes these possibilities and is therefore flawed. A related argument is that "inherent" in a permission for winning and working vein minerals is permission to construct access ways or ramps, for the removal of overburden and other material preventing or impeding access to the vein mineral, and for works in accordance with sensible health and safety practice, such as benching. In my view there is no general concept of ancillary works making permanent changes to the land allied to a lawful operation. The ancillary concept arises in relation to uses of land and is not readily transferred to operations. Whether works are lawful may depend upon whether they are permanent or merely interim stages in the implementation of the permitted development. It is a matter of fact and degree whether particular works are within the description of what is permitted. Generally this concept is of little assistance in interpreting the permission and was not argued to support the appeal on grounds (b) or (c).

4.20 One response by the appellants to the argument that the prime operation must be the winning and working of fluorspar[8] is to question how this should be monitored and to note the absence of any express limit in the permission. Difficulty of monitoring or

[6] This is equivalent to about 2.4:1 by volume.
[7] L/BIL/1 paragraph 5 and L/BIL/2 paragraph 17
[8] For example, in L/BIL/1 paragraphs 9 and 10

measurement does not justify failing to give the permission its proper meaning. I accept that the period over which lawfulness is determined must have regard to the nature of the operations. One of the matters emphasised by the appellants is the statement in the Mineral Planning Factsheet produced by the British Geological Survey [BGS] for the Office of the Deputy Prime Minister in 2006 that "deposits are difficult to identify and evaluate". The typical variability of veins is also recorded in the Statement of Common Ground [SCG]. This has perhaps been given exaggerated significance. If the prime purpose of an operation is to work fluorspar for profit the operator is likely to require some evidence that this will be achieved. Whereas the amount of investigation must have regard to the cost, BIL's evidence has included a calculated estimate of the resource at Peak Pasture. Although there must be consistency between what the permission means, determination whether a proposed operation is lawful, and deciding whether works carried out were lawful, resolution of the latter two questions will have to take account of the available evidence about the resource or reserve. Uncertainty of outcome, because of the variability of veins, will be relevant but does not remove the need to make reasonable investigations in order to benefit from the planning permission.

4.21 The operative text of the planning permission defines the permitted operations. These include the winning and working of fluorspar and barytes. The working of limestone is allowed, but not its winning, and only in the course of working fluorspar and barytes. Working of limestone will necessarily be the subordinate or secondary operation and this will be reflected in the proportions of the minerals worked. If the ratio of limestone to fluorspar and barytes is less than 2:1, as described in paragraph 4.17, this is likely to be consistent with the permission whereas above that level the operations will not be within its terms.

4.22 The view set out above on the interpretation of the planning permission is not wholly precise but is consistent with its terms and defines the maximum extent of permitted limestone extraction. This lack of precision does not mean that the permission is ambiguous, since each part of the permission has an identifiable meaning. Thus the examination of extraneous material is not justified. The conclusions I have come to result from a fair reading of the permission on its face and are in my view reasonable and appropriate. They have not required a strained approach to the language. Nevertheless I propose to look at the documentary material associated with the application to see whether this undermines my conclusions.

Background documentary evidence

4.23 The available evidence most directly connected with the application is the application letter [NPA4], the accompanying plan [NPA5], a report of September 1951 to a committee of the County Council seeking authority for comments to be made to the Minister [NPA7], an officer's report and recommendation dated 3rd October 1951 prepared following a joint site visit which had taken place on 26th September 1951 [NPA8], and the preamble text within the decision letter [NPA9]. The application letter makes no mention of winning or working limestone. Overburden is said to be "stored at convenient points, then used to fill and level as required". Waste material is waterborne to a point shown on the plan then "goes into an old quarry dispersing itself amongst the rocks". The plan also shows the location of the washing plant but contains no other details.

4.24 The report to committee states:

> the proposal is to carry out workings of the old waste dumps and shallow surface diggings to a depth of not more than 15 feet. By these methods it is hoped to recover 5,000 tons of fluorspar gravel, 300 tons of lump fluorspar and 210 tons of barytes annually.

These details are consistent with the application letter. There is no mention of limestone or other minerals.

4.25 The report following the site visit has a number of relevant points in several sections which are set out in the extracts below.

> Minerals to be worked
>
> Apart from fluorspar and barytes, lead and calcite are also found and the permission should extend to these. A certain amount of limestone has to be removed in the winning of the other minerals. Normally speaking, this is waste, but on occasions it is sold, and the Company should have a free hand for this to be done. The Company, however, do not intend to open up a new and large scale limestone quarry as such, and the permission should be restricted to such limestone as is won in the course of getting the other minerals.
>
> Area to be worked
>
> Minerals are extracted from the Deep Rake at the moment, but numerous other veins may have to be used in the future and some of them in the case of war would certainly have to be worked. These are shown on the accompanying plan, and it is necessary that the permission should extend to cover the whole area sufficiently to include these rakes.
>
> Estimate output
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> See Letter from the Company of 20th July, 1951 accompanying application.
>
> Tipping areas
>
> The two tips now being used are shown on the accompanying plan, together with the areas which will be necessary for their expansion. There seems to be no real objection to these tips as they are so remote.
>
> Recommendation
>
> I recommend that permission be granted … for the winning and working of fluorspar, barytes, lead, calcite and associated minerals but not including limestone except in so far as its removal is necessary in order to win the other minerals … wheresoever these minerals may occur … subject to the following conditions:
>
> 1. Tipping All tipping of waste material above general ground level shall be restricted to the areas coloured green. All other waste material removed from the rakes shall be disposed of in the hollows left by the old workings in such a way as to even up the surface of the ground so far as the material will allow

4.26 The preamble within the decision letter essentially sets out a brief background. It confirms that the report by the Principal Regional Officer (presumably NPA8) has been

considered and other Government Departments consulted. It could be said that the text emphasises the mining of fluorspar, both in the explanation why permission has been granted and also in the statement that:

> The proposals concern the removal of fluorspar by working old mine dumps, by surface working in the rakes, and by underground mining. Some barytes, lead and associated minerals may also be won.

Conclusions from the documents

4.27 The documents show what was envisaged at the time the application was made and considered, both by the applicant and those evaluating the project. There is a consistent emphasis on the mining of fluorspar but the report proposes that the sale of limestone which has to be removed in the "winning" or "getting" of the other minerals should not be restricted. There is no support for the view that it was expected and intended that a large amount of limestone would have to be removed to win the fluorspar and was required to be tipped under the conditions. However the permission actually granted adopts a unique wording which is different to that in the recommendation and what it allows should be interpreted independently of the documents. My conclusions in the preceding section of this decision are unaffected.

5. GROUNDS (B) AND (C): OPERATIONS BETWEEN JULY 2003 AND SEPTEMBER 2004

5.1 The notice alleges that there have been operations winning and working limestone other than in accordance with planning permission 1898/9/69. As I explained in opening the inquiry, grounds (b) and (c) would fail if there had been material operations as described in the allegation within the four year period before the issue of the notice. To uphold the notice it is not necessary for the breach to have been continuous or throughout the four year period. These propositions were not questioned or disputed. Such legal grounds of appeal are decided on the balance of probability with the onus of proof on the appellants. The appellants' case is that the operations divide into two distinct phases, prior to and following September 2004.

What took place

5.2 The principal evidence from the appellants as to what operations have taken place since July 2003 comes from Mr Taylor on behalf of MMC. He has been responsible for the site since joining the firm in April 2004 and has reported evidence obtained from his predecessor and others. Limestone sold has been weighed before export and monthly returns are available. Planning contravention notice [PCN] replies were made by both appellants in January 2004, April/May 2005 and January 2006.

5.3 It is the appellants' case that until September 2004 operations on the appeal site were implementing phase 1 of the 1997 ROMP scheme submission. That scheme shows excavation to a depth of 190m on the appeal site but did not identify any mineral veins on the land – these were further to the north within the Peak Pasture site.

5.4 There is broad agreement that some 670,000 tonnes of limestone was extracted and exported for sale between July 2003 and May 2006. The sales figures from MMC imply a total of some 263,000 tonnes in the period to the end of September 2004[9].

How much fluorspar was worked?

5.5 MMC's case is that fluorspar ore worked was stockpiled on the site until August 2006, when the material began to be blended with ore imported from Wagers Flat. Its case is that the amount on site as surveyed at 29th March 2006 was 9,500 tonnes, of which 500 tonnes had been worked up to 1998 by the previous operator and is not part of the operations subject to the notice. This is a reduction of about 1,000 tonnes from the figure given in evidence by Mr Taylor, as a result of a reassessment of the survey calculation towards the end of the inquiry[10]. This is not greatly different to the NPA's survey figure of 8,600 tonnes in May 2006. At this date all the material said to be the extracted ore was in one place, whereas previously this is said to have been in several locations. Notwithstanding this broad agreement on the amount of material on site at the end of the relevant period, evidence on the size and mineral content of stockpiles during the period of operations is useful to indicate the nature and quality of the mineral extracted. I also need to assess how much fluorspar was extracted during each of the two main operational phases. It is notable that Mr Taylor's evidence was largely unsupported by survey information, for example of the size of stockpiles. In addition, surprisingly, there had been only one sample from what is said to have been the largest stockpile, giving a very low fluorspar value.

5.6 MMC claim that there were two stockpiles in January/May 2004, with about 1,000 tonnes near the weighbridge and 5,000 tonnes within the quarry. The NPA had not observed the latter, and the plan with the PCN reply had shown only one location. The NPA's figure for the former is much lower and since this is based on a survey I give it more weight. The 2005 PCN reply states that a further 4,000 tonnes had been extracted up to the end of February 2005. Mr Taylor's evidence is that the total on site in June 2005 was about 10,000 tonnes, with an increase in the amount near the weighbridge to 2,000 tonnes and 3,000 tonnes on the southern waste heap. Whereas the weighbridge figure is close to Dr Cobb's survey total, his equivalent total for the piles on the southern waste heap is 1,080 tonnes.

5.7 The evidence on behalf of MMC of the amounts of fluorspar extracted during particular time periods does not equate with the maximum aggregate total of 9,000 tonnes. Having assessed all the evidence I am unable to form a precise view of the amount of ore worked before and after September 2004. Using MMC's figures, if it is correct that the stock in September (net of the 500 tonnes present at the outset) was 5,500 tonnes, the second phase added only 3,500. Mr Taylor believed the figure during the second phase was about 4,500 tonnes and that must be regarded as the maximum estimate. Mr Taylor confirmed that most of the fluorspar worked up to September 2004 had been from Deep Rake (more than 80% or all but 1,000 tonnes) and most of the total had been worked by the end of 2003 with very little thereafter. Thus in the period January-September 2004 there was disproportionate working of limestone.

[9] Mr Taylor stated that there is about a one month interval between extraction and sale.
[10] NPA81

5.8 Different figures were given as to the required minimum mineral content of ore for this to be bought for processing by Glebe Mines. The price paid reflects the mineral content. MMC's contract stipulates a minimum content of 20%. The tailings from Cavendish Mill contain some 5% mineral. Blending of higher and lower quality ore may maximise a producer's revenue, subject to the price per tonne achieved. The blending which occurred from August 2006 is said to have included 10% ore from Backdale and 90% from Wagers Flat and resulted in sales of 250 tonnes of Backdale material between August 2006 and February 2007. That proportion indicates the marginal significance of the ore from the operations that have occurred on the appeal site.

5.9 The NPA was not aware of the quarry stockpile and has not sampled its content. Mr Taylor provides a single sample figure of 3.5%[11]. This constitutes the majority source of what is said to be the fluorspar ore from the appeal operations. Although it would have been helpful to have more sample figures, it seems that MMC did not consider this necessary and in contrast undertook more sampling of other stockpiles.

5.10 The PCN reply on behalf of MMC in February 2004 states that sample analysis from the stockpile shows a fluorspar content of 28%. In cross examination Mr Taylor did not know where this material had been taken from and there is no documentation supporting the evidence. Mr Taylor's subsequent note[12] attributes this to the weighbridge stockpile. The significance of this needs to be weighed in the context of the size and mineral content of the stockpile reported in June 2004 by Dr Cobb.

Table 2. "Weighbridge" stockpile

Date	Source	Fluorspar %	Number of samples	Comment
May 2004	Dr Cobb	1.4	1	Surveyed volume of stockpile 220 tonnes
January-June 2005	Mr Taylor	5 or less	3	
		5.5-9	3	
		15-18	2	
February 2005	Professor Doyle (for Customs and Excise)	2-5	4	
June 2005	Dr Cobb	5 or less	4	Surveyed volume of stockpile 1,800 tonnes
		20-23	2	Two sub-piles at the southern end with an estimated volume of 125 tonnes

[11] MMC27
[12] MMC27

5.11 The survey information for the weighbridge stockpile suggests that the mineral value of this was very low. Fifteen samples have a mineral content of 9% or less and although up to five samples give a higher value, some of the latter are known to relate only to specific sub-piles

5.12 As noted in paragraph 5.6 above there is a conflict over the size of fluorspar stockpiles on the southern waste heap in June 2005. There have been four samples of this material, one of 27.8% and three between 3.4% and 9.1%.

5.13 The overall impression is that the ore produced was of a low quality and only conceivably saleable when blended with higher quality ore in which it formed only 10% of the product.

Characteristics of the submitted ROMP scheme

5.14 The ROMP scheme involves the excavation, export and sale of the limestone and fluorspar occurring on the land affected to a level of 190m, some 80m below existing levels. A historic estimate by the NPA was that this would "release" up to 12 million tonnes of limestone.

5.15 Evidence for the fluorspar likely to be on the land relies on a trenching report carried out in 1996[13]. This was achieved by excavation to a depth of 3m at 8 points within Peak Pasture. The presence of the veins was known from other sources, such as the BGS map. The purpose of the trial holes was to provide information on the width of the veins and quality of ore. Only one trench found in-situ material, with all other excavated and sampled material being backfill. Four samples were produced for analysis, with fluorspar content ranging from 40-65%.

5.16 Based on this source Mr Walton has calculated the likely tonnage of fluorspar ore from implementation of the ROMP scheme to be 177,200 tonnes. He agreed in cross examination that a 10% reduction should be made to allow for the effect of past underground mining, giving a net figure of about 160,000 tonnes.

5.17 Evidence was given that this might be an over-estimate and it is also argued that in practice more mineral might be found. In this respect the difficulty of identifying and evaluating deposits is described in the BGS Mineral Planning Factsheet and the typical variability of veins is also recorded in the SCG. There was also reference to the Reporting Code for mineral exploration results. In terms of this classification Mr Walton regards his estimate as an inferred resource.

5.18 This is the information available for the purpose of the appeals. Since the appellants do not own the rights to the vein minerals at Peak Pasture it is perhaps not surprising that more detailed evidence has not been provided. The onus is on the appellant/developer to provide sufficient evidence to enable the relevant judgement to be made. In the case of an appeal against an enforcement notice on legal grounds there is an onus of proof on the appellant. I am doubtful that there is sufficient reliable evidence to evaluate the entirety of the operations proposed in the ROMP scheme. Thus for example it might be that in parts of the land there is no fluorspar and that could be relevant to whether the operations would be lawful. The assumption of continuity of the mineral resource is not justified from the very limited evidence put forward. Nevertheless the judgement I need to make is a rather broader one, that is whether operations substantially

[13] BIL2

resembling the ROMP scheme would be in accordance with the 1952 permission. For that purpose I intend to assume that the probable yield of fluorspar would accord with Mr Walton's estimate. It is doubtful that the judgement made would be affected by ascribing a confidence level to this estimate. Whereas in practice the actual yield might be in a wide range around this total, there is little evidence available to determine what this range should be.

Financial considerations

5.19 The list of issues in IN1 noted that in addition to operational evidence, the costs and financial return might also be relevant. No such evidence was included in the proofs of witnesses for the appellants. The ROMP scheme submission had noted when commenting on existing operations that "limestone is being extracted as an associated mineral fundamental to the viability of the extraction activity". Mr Taylor confirmed that the current revenue per tonne for limestone exceeds that for fluorspar ore. The lease also provides a per tonne payment if the Royalty value of minerals worked or sold exceeds the value of the Certain Rent. The payment due per tonne of fluorspar is 4.8 times that for limestone. To date no such payments have been required. For the present purpose it is the revenue value rather than the prospective Royalty which is relevant, although this value may change in the future. Although not relevant to the appeals, it is interesting to note that the discrepancy between the rent valuation of the minerals and returns in the market might increase the relative profitability of limestone sales for the site operator.

Lawfulness of the ROMP scheme operations

5.20 I intend to consider whether the operations outlined in the ROMP scheme would be permitted by the 1952 planning permission on the basis I explained in paragraph 5.18, that is not necessarily in respect of all works but sufficiently for the purpose of these appeals.

5.21 The appellants' case in support of lawfulness is a straightforward one. These are operations to win and work fluorspar and in the course of doing so limestone would be won and worked. "In the course of" means simply that there is an operational connection between the activities. The decision how to conduct the operations is seen to be for the operator and no test has to be met, such as that any part of what is proposed is necessary or reasonably required in order to extract fluorspar. Thus the appellants do not argue that an alternative scheme working along veins and leaving a saw tooth landscape could not be devised but that this possibility is simply not relevant. In operational terms it might also be argued that the development which has occurred on the appeal site would still be required even if the scheme was modified in this way, but this is no part of the current case.

5.22 In the light of my interpretation of the planning permission I do not agree that the ROMP scheme operations are lawful nor therefore were the works on the appeal site. These are not consistent with the terms of the planning permission having regard to the relative quantities of fluorspar and limestone which would be won. The ratio of limestone to fluorspar ore expected from the ROMP scheme is around 75:1. It is not the appellants' case that significant fluorspar would have been worked on the appeal site in this period and the appeals are founded on the fluorspar and barytes ore expected from Peak Pasture. Paradoxically the overall ratio on the appeal site may have been in

the range 47/58:1, albeit of a low quality as I have described. This average ratio hides considerable variation between different parts of the operations. Some 80% of the ore was from Deep Rake and very little ore had been worked from January-September 2004, consistent with expectations, since this part of the ROMP scheme did not identify fluorspar within the main area of operations. In so far as the revenue value of each mineral is relevant, that reinforces the conclusion in relation to the operations by MMC.

Were MMC implementing the ROMP scheme

5.23 MMC accept that the lawfulness of the operations in this period is dependent upon there being part of the overall ROMP scheme. Thus the principal operations were not the winning and working of fluorspar on the appeal site but the provision of access to this mineral within Peak Pasture. On that basis the appellants say that the winning and working of limestone was in the course of winning and working fluorspar. An alternative view of the facts would be that the extraction of limestone was a profitable activity which MMC were content to carry out for its own sake and that there was no realistic prospect of proceeding into Peak Pasture[14].

5.24 Development into Peak Pasture could not proceed without the agreement of Glebe Mines as owners of the vein mineral rights and the stopping up or diversion of Bramley Lane. Glebe Mines is the successor company to Laporte Minerals, who had participated in the submission of the ROMP scheme. Key personnel transferred between the two companies.

5.25 The main evidence relevant to this question was given by Mr Harpley and Mr Taylor. Mr Harpley was involved in negotiating the lease to MMC. His position is that he had no reason to believe Glebe's willingness to participate in the exploitation of Peak Pasture was different to that of Laporte Minerals in the 1990's until he received the letter dated 11th March 2004. He accepted that the terms of that letter were clear and although he spoke to MMC as a result, the letter came as a surprise and was not preceded by any other communication, nor did he mention having discussed this subject with Glebe or its agents thereafter. This letter and that to Merrimans[15] are the only documents tendered on this subject, notwithstanding the potential operational importance of this to MMC, apart from the two file notes provided by Mr Bent from about the same time[16].

5.26 Mr Taylor was questioned at some length on this subject. He could give no direct evidence based on his own contacts and although he met Glebe management in November 2004, this is outside the critical period and the discussion concerned fluorspar trading[17]. He is an engineer employed to manage the site and was working to the ROMP scheme plan. But he was an agent of his employer. The fact that that was what he understood he was to do does not mean that the employer genuinely or reasonably believed that to be the case or that objective assessment of all the facts would show that to be so. Mr Taylor's evidence is mainly hearsay and I report some of his replies below. There was more than one meeting with Glebe but he cannot say how

[14] L/BIL/3 paragraph 12 records that the NPA's case treats the appeal site as though it were being operated as an independent unit.
[15] NPA64 and 67
[16] MMC25
[17] MMC3

many. He does not know whether there were discussions to lease the land north of Bramley Lane. He was not aware that the NPA was in a position to proceed with the Winster Moor planning permission at the time he joined MMC in April 2004 but believes the company was. He does not know when MMC knew of the November 2003 resolution. He was employed to implement the ROMP scheme and did not know it was not approved. Asked whether there was any correspondence, he replied that there may be file notes. He believes there were discussions and meetings with Glebe after March 2004. Asked whether Glebe would have been bound to refer to the impending s106 agreement, he replied that he had heard to the contrary but was not sure whether there were any minutes. He claims Glebe continued to give the impression that consent to proceed with work on Peak Pasture might be given, although he accepts that it was known from April 2004 that that possibility was at risk and there was a real prospect of refusal.

5.27 Regarding the need to stop up or divert the highway, correspondence provided by MMC shows that this was investigated between December 2003 and February 2004.

5.28 I have carefully considered Mr Taylor's evidence but conclude that it is of no real help since I cannot set aside the possibility that he has recounted misleading evidence in good faith. This is not a criticism of Mr Taylor but I cannot give weight to his answers. Even if meetings or conversations did occur, Mr Taylor cannot give reliable evidence of what was said. Bearing in mind the contents of the Solicitor's letter dated 11th March 2004, it is reasonable to expect a documented response of some kind whereas no note of any meeting or discussion or other written evidence has been produced. It is unlikely this reticence was the result of a reluctance to breach commercial confidence, since at the date of the inquiry any goodwill between Glebe Mines and MMC appeared to have been lost.

5.29 There is no evidence that either BIL or MMC had any substantial basis for believing Glebe Mines would give its consent to the ROMP scheme. I regard an expired agreement entered into by a predecessor company, albeit with some common personnel, as insubstantial and inadequate. The work undertaken regarding the highway orders is evidence of intent in the period to mid-February 2004 but the failure to progress this further from that time is significant. There would also need to be the prospect of agreement with Glebe Mines. The appellants have identified, including in Mr Taylor's evidence, that Glebe may have been inconsistent in relation to fluorspar purchases and are also self-interested, for example in relation to negotiations with the NPA. That does not remove the obligation on MMC to produce evidence to explain its conduct. Although in closing for MMC several references were made to discussions with Glebe, there is no reliable evidence to support these. The claim that, in the period from March 2004, "MMC did not give up hope" is a very weak one[18]. I appreciate that the NPA relied on the prospect of mining on Peak Pasture in defending the grant of planning permission at Winster Moor and in particular the weight given to the s106 Agreement in that decision[19]. Whereas this confirms that the situation was uncertain in the absence of any formal agreement, it does not show that MMC had any hope of securing working rights. Overall I conclude that the weight of the evidence demonstrates that from mid-March 2004 there was no reasonable reliable prospect of

[18] L/MMC4 paragraph 45
[19] BIL4 paragraph 40

implementing the ROMP scheme into Peak Pasture and having regard also to the financial benefit to MMC the works were pursued on the basis of what could be carried out within the appeal site independently.

5.30 The NPA also identified operations which did not accord with the ROMP scheme submission, particularly an extension further east than proposed. Mr Taylor argued that any amendments were for practical or safety reasons. These works and the reasons for them do not materially alter the principal arguments so that I do not give them separate detailed consideration.

Conclusions

5.31 For the reasons set out above I have concluded that development based on the ROMP scheme submission was not lawful and therefore works substantially in that form were in breach of planning control. As a subsidiary point, I have also concluded that in the period from March 2004 MMC did not have the prospect of implementing the ROMP scheme beyond the Backdale site and the works were proceeding for the return provided independently. Judged in this way the appellants would not claim that the operations were in the course of working fluorspar and barytes and thus they would necessarily be unlawful. For these reasons there was material development outside the terms of the 1952 planning permission as alleged in the notice and grounds (b) and (c) fail accordingly.

6. GROUNDS (B) AND (C): OPERATIONS FROM OCTOBER 2004

6.1 The evidence for MMC is that operations in this period were principally targeting Southern Vein for the purpose of extracting fluorspar. This is said to be the source of in excess of 3,000 tonnes of fluorspar with the balance from Deep Rake.

6.2 There has at no time been a documented working scheme nor has there been any site investigation of the extent of any resource. Consequently there is no estimate of the size of any resource nor any forecast of what was expected. The SCG describes the width of Southern Vein as between 0.05 and 0.9m. There are three samples from it with very different ore contents: 1.6%, 8.9% and 64.5%. This is said to have first been exposed when widening the haul road in the summer of 2004, which does not demonstrate systematic exploitation. The best evidence of the nature of the operations is the quantity and quality of worked mineral. The maximum amount of ore obtained on MMC's case is 4,500 tonnes and the amount of limestone sold is some 410,000 tonnes, a ratio of 1:91.

6.3 The evidence to the inquiry included alternative methods for winning and working in Southern Vein, Cross Vein and Catlow Rake. This had commenced with Drawing AEC5 included in Dr Cobb's November 2004 report and Mr Walton had produced alternative proposals. In closing the NPA argued that the excess of limestone worked over the maximum figure said to be necessary by Mr Walton demonstrates that the working of limestone had not been reasonably necessary[20]. Although this argument is superficially attractive it does not make any allowance for those operations carried out with the stated intention of implementing the ROMP scheme. It is also the case that these schemes (and their calculated volumes) include the working of Catlow Rake and therefore extend beyond current site operations. Overall I am not persuaded that these

[20] L/NPA3 paragraphs 33 and 34

calculations can provide a sound benchmark against which to test site operations. Furthermore Drawing AEC5 is not regarded as lawful development by the NPA on its current case nor does it accord with my interpretation of the planning permission.

6.4 Dr Cobb argued that the poor quality of the ore stockpile is inconsistent with the claim that fluorspar has been targeted. He also argued that there would be a more systematic method of working beginning with the identification of the extent and quality of the vein mineral if this was the primary objective. The operations can be characterised as winning and working limestone but recovering any fluorspar discovered in the process.

6.5 Although Mr Taylor contested this view, the weight of the facts leads me to accept it. I appreciate that the quality and extent of the resource will vary in a particular location but this point is of limited assistance to the appellants' case. There is no evidence MMC expected to obtain more ore or that this was likely. On the assumption that the working method was successful in recovering whatever ore was present, evidence of the quantity and quality of fluorspar ore recovered is compelling.

6.6 Both appellants relied on the evidence of Dr Cobb that it is for the operator to decide whether any particular vein is substantial enough to justify working. This is correct in that there is no condition to the permission which prescribes some minimum mineral value. It is also obvious that the decision on viability and an acceptable level of financial return is one for the operator and not for the planning authority. However it is reasonable to give considerable weight to the evidence concerning the mineral worked in order to decide whether the operations have been within the description of what is permitted or materially different. Since this is an operational permission, the nature of the works is always likely to be the principal evidence but an objective assessment of financial evidence may also show what was the purpose of the operations. The evidence of Mr Taylor that the prevailing price for limestone exceeds that for fluorspar adds further weight to the quantitative and operational evidence. I conclude that the operations from October 2004 were not within the terms of the planning permission as alleged in the notice. Grounds (b) and (c) therefore fail in respect of the substantial operations carried out in this period.

7. GROUND (F)

7.1 In the notice as issued requirement (a), which applies to the majority of the land, is the most restrictive and would preclude all the winning and working of limestone. Requirement (b) is intended to allow continued working of Deep Rake and follows the wording of the operative text in the planning permission. There are two principal points of dispute under this ground of appeal: whether requirement (a) is lawful and what is the appropriate boundary to define the area subject to requirement (b). It is agreed between the main parties that if my conclusion is that requirement (a) is not lawful then the substance of requirement (b) should apply to the whole of the land. In those circumstances there would be no need to identify a separate boundary distinguishing areas subject to different requirements and the second point of dispute would be irrelevant.

Is requirement (a) lawful?

7.2 A basic principle which is not disputed is that the notice cannot prevent operations which are lawful. This can be accommodated in two ways. Firstly, the requirements might be varied so that any conflict is removed. Secondly, in some circumstances there may be a potential conflict (such as by the exercise of permitted development rights) but this is not held to be so fundamental as to require amendment of an enforcement notice. There are several Court judgements relevant to these principles, including *Mansi v Elstree District Council* and *Cord v Secretary of State for the Environment*. These were not referred to at the inquiry but in my view that was because the law as it applies here was agreed. Except perhaps in one secondary respect, the NPA did not argue that any conflict between the requirement and a lawful operation should not be removed by amending the notice. The Cord judgement acknowledges that in certain limited circumstances that may be appropriate and correct but it was not directly argued by the NPA that such a distinction or inconsistency should remain here. In my view the substance of this approach is correct in relation to this notice. The requirement is intending to preclude operations which would be unlawful. Consistency between the notice and the terms of the permission is fundamental and should be upheld. There would be serious risks in trying to re-express the permission in the notice requirements and that should be avoided. Requirement (b) repeats the critical text of the permission and that is sensible and is endorsed in the consensus view that this should be adopted if the appeal on ground (f) succeeds.

7.3 The NPA's case for requirement (a) is founded on the argument that there are not deposits of fluorspar and barytes in workable quantities on the land affected. The presence of mineral veins, that is Southern Vein and Catlow Rake, within the appeal site and therefore at least with the theoretical potential for extraction is acknowledged in the SCG. Dr Cobb's evidence states that Catlow Rake could have significant resources, although what this might mean is not quantified or elaborated. The NPA's submissions argue that the requirements should only have regard to what might occur "within a reasonable timescale" when considering the possible impact of changes in the value of the minerals or in the technology for their exploitation. Thus it is argued that only developments of this kind which are "reasonably possible" should be taken into account. I do not agree that this correctly interprets the statute. Section 173(4) is authority for a notice which makes any development comply with the terms of any planning permission. This notice is seeking to do this by preventing development which is not permitted. There is no authority in s173 to prevent operations which are permitted but are regarded as unlikely to occur within a foreseeable timescale. The Town and Country Planning Act has adopted a long timescale in relation to minerals permissions, so that the permission can continue to be implemented until 2042. The requirements of the notice should be consistent with that timescale. If the NPA was correct in principle, there would be considerable practical difficulties in seeking to define what are realistic scenarios for mineral values or technology. The inevitable uncertainties make it very doubtful that this could be a satisfactory basis for determining the matters at issue here and I am convinced such an approach would be wrong.

7.4 The SCG confirms the presence of three veins or rakes within the appeal site. In the case of the Camm Rake offshoots it is accepted that these would have to be worked in conjunction with the land to the north subject to the same planning permission. The requirements of the notice should be robust in relation to future changes, such as in ownership rights or other circumstances. The appellants have not produced detailed proposals to win and work fluorspar and barytes in accordance with the planning permission on the area subject to requirement (a). It is very possible that the practical potential to do this lawfully at the present time is very slight mainly because of the limited resource but I do not accept that would make the requirement lawful.

7.5 The submissions, especially those on behalf of the NPA and BIL, refer to the financial return from any mining operations. The NPA refers to the absence of "worthwhile" mineral and cites in support the reference to "known deposits" in the preliminary text in the 1952 decision letter. On that basis it is argued that there could be "no significant course of working of it". BIL identify the possibility of an increase in the price of the minerals, including as a result of the effect of action by overseas suppliers. Dr Cobb accepted that it is for the operator to decide whether any particular vein is substantial enough to justify working. Nevertheless an objective assessment of financial evidence may show what is the purpose of operations. Importantly this is an operational permission and thus the lawfulness of the requirements should not be dictated by the monetary value of the production. Even if the concept of "worthwhile" were to be defined as a sufficient physical quantity to be significant or material, it is unclear how that should be decided. If this were to be done it would have to have regard to the possibility of technological advance enabling the lawful extraction of larger quantities efficiently (and potentially at lower cost). Fundamentally I do not accept that the absence of any calculated resource with a real prospect of extraction in the circumstances foreseeable during the next few years would be grounds to uphold the requirement. Thus while it can be held that the onus of proof on legal grounds of appeal is upon the appellant, I consider that there is sufficient evidence to determine the matter at issue here. Further information, such as the investigation and measurement of the resource and perhaps an evaluation of the return from mining is not needed.

7.6 The NPA also states that the scope for dispute over given facts would be greatly increased if requirement (a) were not upheld. I accept that that is true and agree that it is always preferable for the requirements of an enforcement notice to be as precise and easy to monitor as possible. Whereas this would be an advantage from retaining requirement (a), it does not override the argument that this would be unlawful and prevent operations which have planning permission.

7.7 For the reasons set out above I shall allow the appeals on ground (f) and apply requirement (b) to the whole of the land. BIL also seek a variation because it is perceived that the notice might be regarded as applying to the use of the processing works on the land. The allegation is directed at mining operations and the requirements of the notice are intended to be consistent with that. I am not convinced that there is any overlap nor can I confirm the lawful use of the building on the land, but for the avoidance of doubt I shall make the minor variation sought, the wording of which is not disputed.

8. CONCLUSIONS

8.1 BIL have referred to the prospective impact of the notice on property rights and that such an effect would be contrary to Article 1 of the First Protocol to the European Convention on Human Rights. The notice as varied would not restrict lawful rights.

8.2 Grounds (b) and (c) have failed. The appeals under ground (f) succeed and I shall vary the enforcement notice accordingly, prior to upholding it.

9. FORMAL DECISION

APPEALS REF: APP/M9496/C/06/2017966 and APP/M9496/C/06/2018130

9.1 I allow the appeals on ground (f) and direct that the enforcement notice be varied by the deletion of the requirements in paragraph 5 and the substitution of the following:

> Cease the following mining operations on the land edged red on the attached plan:
>
> > the winning and working of limestone other than the working of such limestone as is won in the course of working fluorspar and barytes.

9.2 Subject to this variation I uphold the enforcement notice.

David Baldock

INSPECTOR

APPEARANCES

FOR BLEAKLOW INDUSTRIES LIMITED:

Martin Kingston QC	Of Counsel instructed by Mr John Withinshaw, Bremners Solicitors
Timothy Jones	Of Counsel
He called	
Mr R S Harpley	Director, Bleaklow Industries Ltd
Mr K S Walton BSc MSc CEng CGeol MIMMM FGS FIQ MIOSH	Mining engineer

FOR MMC MINERAL PROCESSING LIMITED:

Craig Howell Williams	Of Counsel instructed by Marrons, Solicitors
He called	
Mr P Taylor BSc	Operational manager

FOR THE LOCAL PLANNING AUTHORITY:

Frances Patterson QC	Of Counsel
Alan Evans	Of Counsel
She called	
Mr D Bent BSc DipTP MRTPI	Planning officer
Dr A E Cobb FGS MIMMM CEng	Mining engineer, GWP Consultants

FOR CAMPAIGN TO PROTECT RURAL ENGLAND:

Dr A Tickle BSc PhD, who also gave evidence	Head of Planning and Campaigning, Peak District and South Yorkshire

FOR THE SAVE LONGSTONE EDGE GROUP:

Mr C Woods, who also gave evidence	Local resident
Dr S Furness (opening statement)	Ecologist/local resident

INTERESTED PERSONS:

Dr S Furness	Ecologist/local resident
Mr Julian Tippett	Local resident, 1 Old Hall Gardens, Stoney Middleton, Hope Valley S32 4TZ

DOCUMENTS

1 List of persons attending the inquiry
2 Letter of notification of the inquiry
3 Bundles of letters from interested persons
4.1-7 Letters, documents and notes from Dr Furness
5 Plan attached to enforcement notice

SCG Statement of common ground
IN1 Inspector's note – September 2006
IN2 Inspector's note – November 2006

Submitted by Bleaklow Industries Ltd

Appendices to Mr Harpley's evidence
RSH1 Statements dated 7th August 2005 [OP] and 23rd February 2006 [P1] and appendices
RSH2 British Geological Survey report for ODPM January 2006
RSH3 Chronology of proceedings
RSH4 Plan of Wagers Flat
RSH5 Judgement and Order of Mr Justice Sullivan – 29th November 2006
RSH6 Planning permission NP/DDD/1100/473 dated 25th March 2004
RSH7 Letter from Slinter Mining to Glentoal Associates 2nd November 2006
Appendices to Mr Walton's evidence
KSW1 "Original" proof and appendices [OP]
KSW2 Supplementary proof (first) and appendices [P1]
KSW3 Figure KW13
KSW4 Figure KW14
Other documents
BIL1 Legal submissions of NPA on interpretation of 1952 planning permission dated 27th March 2006
BIL2 Peak Pasture Trenching Report and letter October 1996
BIL3 Summary of the lease of 4 July 2003 and note on lessor's freehold title
BIL4 Witness statement of Mr Bent to Winster Judicial Review
BIL5 Lease of 4 July 2003
BIL6 Note on Inspector's ruling given on 22nd February 2007
BIL7 Mr Walton's revised fluorspar inferred resource calculations (ROMP)
BIL8 Planning permission 1898/9/18 at Bradwell Moor and Smalldale – 27th July 1951
BIL9 Mr Walton's overlay on NPA78
BIL10 Extract from conveyance to Glebe Mines 1st May 1962
BIL11 Mr Walton's plan KW13A
BIL12 Legal opinion by Robert McCracken QC 16th February 2004

Submitted by MMC Mineral Processing Limited

MMC1 Environmental statement July 2000 – Part 1 and plans LO1/1 and LO1/9
MMC2 Hazard Appraisal Geotechnical Report – Geoffrey Walton Practice August 2003
MMC3 Note of meeting with Glebe Mining – 18th November 2004
MMC4 Geotechnical Assessment Regulation 33 Report – Geoplan Limited October 2004
MMC5 Survey models – April 2004 and June 2005
MMC6 Correspondence re 2004 "notice" requirements
MMC7 Sample analysis

MMC8 Dr Cobb's proof – August 2005
MMC9 Working of Deep Rake: letter to NPA dated 11th May 2006; Geoplan proposed mineral extraction April 2006; Wagers Flat site investigation and working extraction plan
MMC10 Circular announcing public meeting August 2006
MMC11 Wagers Flat: limestone and fluorspar ore ratios
MMC12 Weighbridge tickets: August-December 2006
MMC13 Fluorspar – minerals planning factsheet – January 2006; ODPM/BGS
MMC14 Delivered fluorspar ore analysis – August-November 2006
MMC15 Sample analysis– September and October 2005
MMC16 BIL correspondence with Glebe Mines – July 2003
MMC17 Site layout December 1997 (from report at MMC2)
MMC18 Letter from Glebe Mines – 8th February 2007
MMC19 Plan of photograph viewpoints
MMC20 Site survey – 29th March 2006
MMC21 Correspondence regarding agreement on tonnages
MMC22 Correspondence re highway orders
MMC23 PCN extension of time – January 2004 letters
MMC24 Correspondence re Deep Rake working area
MMC25 Mr Bent's notes of telephone calls from John Parkhouse – March 2004
MMC26 Plan showing proposed revised area to be subject to requirement b in the enforcement notice
MMC27 Sample analysis locations - schedule and plans MMC27.1-3

Submitted by the National Park Authority

NPA1 Enforcement Notice alleging without planning permission the winning and working of limestone other than in accordance with planning permission 1898/9/69, namely the winning of limestone, and the working of limestone other than in the course of working fluorspar and barytes, dated 23 November 2004.
NPA2 Structure Plan Policies
NPA3 Local Plan Policies
NPA4 Letter of application dated 20 July 1951
NPA5 Plan accompanying letter of application showing incomplete land ownership details
NPA6 Tracing plan showing complete land ownership
NPA7 Committee report, September 1951
NPA8 Note of site visit of 26 September 1951
NPA9 Letter ref: 1898/9/69 granting permission, 24 April 1952
NPA10 Plan accompanying letter ref: 1898/9/69, 24 April 1952
NPA11 Letter from National Park Authority to Severn Trent Water Authority dated 4 August 1989
NPA12 Committee Report seeking authority for enforcement action, November 1994
NPA13 Letter from National Park Authority to Peak Minerals, 17 May 1995
NPA14 Letter to National Park Authority from RMC, 29 March 1996
NPA15 Submission made under the Environment Act 1995 by RMC, March 1997
NPA16 Planning permission NP/WED/0497/157, 17 February 1998
NPA17 Planning Control Committee report dated 30 May 1997
NPA18 Letter to National Park Authority from RMC, 8 March 2000
NPA19 Letter to National Park Authority from RMC, 2 July 2003

NPA20	Letter from National Park Authority to RMC, 13 May 1999
NPA21	Letter from National Park Authority to RMC, 21 May 1999
NPA22	Letter from National Park Authority to Merrimans, 21 August 2003
NPA23	Letter from Merrimans to National Park Authority, 2 September 2003
NPA24	Letter from Bleaklow Industries Ltd to National Park Authority, 9 September 2003
NPA25	Planning Contravention Notices, 19 December 2003
NPA26	Planning Contravention Notice responses, January 2004
NPA27	Geoffrey Walton Practice consultants report, November 2004
NPA28	Glebe Mines Ltd consolidating planning application NP/DDD/1100/473, November 2000
NPA29	Planning Permission (Longstone Edge consolidating application) ref: NP/DDD/1100/473 and legal agreement, March 2004
NPA30	Planning Permission (Winster) ref: NP/DDD/0503/282 and legal agreement, September 2004
NPA31	Judicial Review Claim Form
NPA32	English Clays v Plymouth Corporation, 1974
NPA33	South Glamorgan County Council v Hobbs (Quarries), 1980
NPA34	EMWPA Annual Monitoring Report 2003
NPA35	Supplementary Planning Control Committee report 13 February 1998
NPA36	Excerpt of Environmental Statement produced by Bleaklow Industries Ltd 2000
NPA37	Marrons letter of 6 April 2004
NPA38	HMCE Report Analysis of fluorspar waste samples from Derbyshire, May 2005
NPA39	Geo-technical Assessment Regulation 33 Report produced by Geoplan Ltd for MMC October 2004
NPA40	Planning Contravention Notices, 23 March 2005
NPA41	Planning Contravention Notice responses, April/May 2005
NPA42	Additional Structure Plan Policies
NPA43	Additional Local Plan Policies
NPA44	Planning Committee Report 20 August 2004 (with minutes and resolution)
NPA45	Planning Committee Report 12 October 2001 (with minutes and resolution)
NPA46	Planning Committee Report 28 November 2003 (with minutes and resolution)
NPA47	Bundle of letters of representation (69 letters)
NPA48	Planning contravention notices dated December 2005
NPA49	Planning contravention notices responses January 2006
NPA50	Planning committee report and minutes 20th January 2006
NPA51	Stop notice 24th January 2006
NPA52	Thomas David (Porthcawl) Ltd v Penybont Rural District [1972]
NPA53	National Park Authority report with minutes 24th March 2006
NPA54	Planning enforcement notice 5th May 2006
NPA55	Stop notice 8th May 2006
NPA56	Memoirs of the Geological Survey Vol XXVI 1923
NPA57	Tables, drawings and Appendices submitted with Dr Cobb's proof
NPA58	Extract from Dictionary of Mining by A Nelson
NPA59	Extract from Dictionary of Mining and Related Terms - EduMine
NPA60	Aerial photographs A. 13 February 2001 B. 30 August 2003
NPA61	Letter from NPA to Marrons – 27th June 2006
NPA62	E-mail and drawings sent from Dr Cobb to Mr Bent – 9th June 2006
NPA63	Letter from Glebe Mines to Chief Executive of NPA – 9th February 2007

NPA64 Letter from Blacks Solicitors to Bleaklow Mining – 11th March 2004
NPA65 Mineral extraction and stockpile tonnages – Dr Cobb
NPA66 Code for reporting mineral exploration results (The Reporting Code)
NPA67 Letter to MMC from Blacks – 11th March 2004
NPA68 Volume of waste on site – note from Dr Cobb
NPA69 Survey plan showing quarry faces, stockpiles and waste tips – 16th May 2006
NPA70 Proposed amended enforcement notice plan
NPA71 Letter from Glebe Mines to NPA – 25th July 2003
NPA72 Letter from Bleaklow to Glebe – 6th June 2005
NPA73 Letter from Glebe to Bleaklow – 4th July 2005
NPA74 Letter from Glebe Mines to NPA – 19th February 2007
NPA75 Quantities removed from Longstone Edge – letter from Glebe Mines 15th August 2005
NPA76 Witness statement of Clint White for Winster Judicial Review
NPA77 Note to accompany NPA70
NPA78 Proposed fill ramp to access Deep Rake
NPA79 Plan showing relationship between revised notice boundary and yellow area in NPA62
NPA80 Periods when stop notices were in effect
NPA81 Statement on quantities agreed with MMC
NPA82 Schedule of monitoring visits to Wagers Flat

Submitted by the Campaign to Protect Rural England

CPRE1 Letter from MOHLG to Bleaklow Mining – 24th April 1952
CPRE4 The lead legacy: the prospects for the Peak District's Lead Mining Heritage; 2004; Peak District NPA with English Heritage and English Nature [extract]
CPRE5 Old mineral permissions and National Parks; 2004; N Denton et al; Council for National Parks/Friends of the Peak District [extract]
CPRE8 Report on Mines (Working Facilities and Support) Act 1966 in relation to Backdale Quarry; W J Voaden 2005
CPRE14 Longstone Edge ROMP application – additional information November 1997
CPRE15 Witness statement by Clint White, Glebe Mines (extract)
CPRE16 Fluorspar memoir – K C Dunham 1952 (extract)
CPRE17 Bleaklow cave – J Beck, Descent magazine, 1995 (extract)
CPRE18 Underground plans 1983/1995
CPRE19 Peak District National Park Development Plan – Report and analysis of survey: Chapter 12 Geology and mineral extraction

Submitted by the Save Longstone Edge Group

SLEG9 Legal opinion by Keith Lindblom QC
SLEG16 Letter from Glebe Mines – 6th April 2005
SLEG17 E-mail re Glebe Mines Procurement Policy – August 2005
SLEG23 Extract from Shorter Oxford English Dictionary on Historical Principles: "win" and ""work"
SLEG24 Fluorspar mining in Derbyshire – J V Bramley
SLEG25 Extract from planning application supporting statement on behalf of Glebe Mines – extension to Arthurton West Pit – July 2004
SLEG26 Diagram illustrating a method of working
SLEG27 Revised SLEG26

Proofs of evidence

P/BIL/1	Second supplementary proof of Mr Harpley [P2]
P/BIL/2	Summary of Mr Harpley's evidence [SP]
P/BIL/3	Supplementary proof (second) of Mr Walton) [P2]
P/BIL/4	Summary proof of Mr Walton [SP]
P/BIL/5	Third supplementary statement of Mr Harpley [P3]
P/MMC/1	Proof of Mr Taylor [OP]
P/MMC/2	Supplementary proof of Mr Taylor [P1]
P/MMC/3	Summary of supplementary proof
P/MMC/4	Rebuttal proof [RP]
P/NPA/1	Proof of Mr Bent
P/NPA/2	Summary proof of Mr Bent
P/NPA/3	Proof of evidence of Dr Cobb
P/NPA/4	Summary proof of Dr Cobb
P/CPRE/1	Proof of Dr Tickle [OP]
P/CPRE/2	Summary proof of Dr Tickle [SP]
P/CPRE/3	Dr Tickle – rebuttal proof [RP]
P/SLEG/1	Proof of Mr Woods
P/SLEG/1A	Revised proof of Mr Woods
P/SLEG/2	Summary proof of Mr Woods
P/JT/1	Submission of Mr Tippett dated 30th July 2006
P/JT/2	Summary proof

Submissions

Document	L/BIL/1	Joint submissions with MMC on the meaning of the 1952 permission – 27th March 2006
Document	L/BIL/2	Response to NPA submissions – 12th February 2007
Document	L/BIL/3	Opening statement
Document	L/BIL/4	Written closing submissions
Document	L/MMC/1	Response to NPA submissions – 9th February 2007
Document	L/MMC/2	Opening statement
Document	L/MMC/3	Amendment to paragraph 29a of L/MMC/1
Document	L/MMC/4	Written closing submissions
Document	L/NPA/1	Legal submissions on the meaning of the 1952 permission – 16th January 2007
Document	L/NPA/2	Opening statement
Document	L/NPA/3	Written closing submissions

Document	L/CPRE/1	Opening statement
Document	L/CPRE/2	Written closing submissions

Document	L/SLEG/1	Opening statement
Document	L/SLEG/2	Written closing submissions