

PEAK DISTRICT NATIONAL PARK AUTHORITY

PROOF OF EVIDENCE: JANE ELIZABETH NEWMAN MTCP (Hons) MRTPI

Town & Country Planning Act 1990

Environmental Impact Assessment (England and Wales) Regulations 1999 as amended

Peak District National Park Authority (Deep Rake, Hassop (Longstone Edge East)) Prohibition

Order 2013

PINS REFERENCE NPCU/PROH/M9496/73265

1.0

I am Jane Elizabeth Newman, Senior Minerals Planner within the Planning Service of the Peak District National Park Authority (the

	<p>Authority). I hold a Master of Town and Country Planning (Hons) degree from Manchester University, obtained in 2000. I have worked within the mineral and waste planning field since 2000, initially as an Enforcement Officer at Oxfordshire County Council and since 2002 at the Authority. During my employment with the Peak District National Park Authority, I have dealt with minerals and waste proposals, prohibition orders, policy work and the monitoring and enforcement of numerous sites. I am a chartered member of the Royal Town Planning Institute.</p>
1.2	<p>The evidence which I have prepared and provided in this proof is true, to the best of my information and belief, and has been prepared and is given in accordance with, the guidance of the professional institution of the RTPI. Historical information which I have not personally verified is taken from the Authority's records and other published sources. I confirm that the opinions expressed are my true and professional opinions.</p>
2.0	<p><b><u>Introduction</u></b></p>
2.1	<p>This proof of evidence is in support of the confirmation of a prohibition order (Peak District National Park Authority (Deep Rake, Hassop (Longstone Edge East) Prohibition Order 2013) ("the Prohibition Order")(Doc 1) under section 102(8) and Schedule 9 of the Town and Country Planning Act 1990 ("the Act") made on 23<sup>rd</sup> December 2013, prohibiting the resumption of development consisting of the winning and working of minerals or the depositing of mineral waste anywhere in, on or under the land at Deep Rake, Hassop (Longstone Edge East) Derbyshire ("the Site") as shown outlined in red on Plan A attached to the Prohibition Order (doc 33).</p>
2.2	<p>Under paragraph 4 of Schedule 9 of the Act, the order shall not take effect unless confirmed by the Secretary of State.</p>
2.3	<p>On 17<sup>th</sup> January 2014 representations were made to the Secretary of State by John Church Planning Consultancy Limited on behalf of Bleaklow Industries Limited (Bleaklow). Bleaklow also acted as agent for British Fluorspar Limited (BFL). Both BFL and Bleaklow opposed the Prohibition Order and sought a hearing (doc 34).</p>
2.4	<p>Notice was given by the Secretary of State for Communities and Local Government of his decision to hold a public local inquiry into the Prohibition Order.</p>
2.5	<p>BFL withdrew their objection to the making of the Order on 9 July 2015, (doc 35). As noted in the letter to the parties from the Planning Inspectorate, dated 7<sup>th</sup> August 2015, Bleaklow confirmed that they do not wish to challenge the prohibition on mineral working, only to the restoration requirements contained in the Prohibition Order.</p>
2.6	<p>The land subject to the Prohibition Order amounts to 138 ha. The land is located on the eastern end of Longstone Edge in the Peak District National Park. The land falls into a number of different Parishes:</p> <ul style="list-style-type: none"> <li>• Great Longstone CP</li> <li>• Calver CP</li> </ul>

	<ul style="list-style-type: none"> <li>• Hassop CP</li> </ul>
2.7	<p>Ownership details for Longstone Edge East are as follows:</p> <ul style="list-style-type: none"> <li>• Bleaklow Industries Ltd (<b>Bleaklow</b>) owns the freehold land except a small area west of Backdale and own the mineral rights south of Bramley Lane.</li> <li>• Coverland UK Ltd (<b>Coverland</b>) purchased Bleaklow in 2012 together with assets, including the land that it owned which was subject to the 1952 permission. The name Bleaklow Industries Ltd was retained and it continues to operate as a limited company.</li> <li>• RMC Roadstone Ltd – Eastern (<b>RMC</b>) were the previous leaseholders of land owned by Bleaklow.</li> <li>• British Fluorspar Limited (<b>BFL</b>), who acquired the interests formerly held by Glebe Mines Ltd (<b>Glebe</b>), owns the vein mineral rights, and the limestone disturbed whilst working the vein minerals, to the north of Bramley Lane and a limited area to the south of Bramley Lane. Glebe were subsequently acquired by Ineos Fluor (<b>Ineos</b>) but the company name of Glebe was retained.</li> <li>• Laporte Minerals (<b>Laportes</b>) were predecessors of Glebe Mines in terms of their mineral and property interests.</li> <li>• The surface of a small area to the west of Backdale is owned by the Bolland family (<b>the Bolland family</b>). Bleaklow own the mineral rights in this land.</li> </ul> <p>A plan is attached showing these land interests (doc 36) and the location of the various workings referred to in my evidence. In my evidence I will use the names in bold to refer to these parties.</p>
3.0	<b><u>Relevant Planning History</u></b>
3.1	I have prepared a relevant planning history from the information contained on the Authority's files, which I attach at Appendix 1 to my proof of evidence. The main points I wish to draw from this history are set out in the following paragraphs.
3.2	A ROMP application for determination of conditions under Schedule 13 of the Environment Act 1995 ( <b>the ROMP application</b> ) - which included the review of the old mineral permission originally granted in 1952 - was submitted in March 1997 (doc 24). RMC was the applicant. The application included a submission for working which was made jointly with Laportes. The scheme broadly showed (within the prohibition order area) opencast working at Backdale, and Peak Pasture for limestone, and opencast working along vein structures at Wagers Flat, Beacon Rod, Unwin Vein and Red Rake and underground working at Deep Rake during the first 15 years. The applicant proposed to submit areas of working details in the periodic review.
3.3	The case was summarised in the judgement as follows: <i>'Bleaklow Industries Limited("the Applicant") was the mineral owner of the majority of land covered by a 1952 planning permission at Longstone Edge in the Peak District National Park. The Applicant had leased some of its mineral rights to a company which, together with</i>

	<p><i>the owner of the remaining mineral rights, jointly applied to the Peak District National Park Authority ("the Authority") for a determination of the conditions to which the 1952 permission was to be subject. Following determination of that application on February 13 1998, as it did not appear that the joint applicants were going to appeal against the Authority's determination, the Applicant applied for leave for judicial review for that decision. After making that application the Applicant learnt that the Authority was taking the point that it lacked jurisdiction to make the determination it made on February 13 1998 in view of the decision of the Court of Appeal in R v North Yorkshire County Council ex p. Brown in which it was held that, when determining the conditions to be attached to interim development order permissions, the mineral planning authority could require an environmental assessment....the Authority required an environmental assessment from the joint applicants on February 9 1998 immediately following the Court of Appeal decision, but this had not been provided by February 13 1998, when the Authority made it's determination. The Authority wrote to the joint applicants on February 17 1998 indicating that it had made its determination without prejudice to its view that it lacked jurisdiction to make the determination, in view of the absence of an environmental assessment.'</i> (doc 37)</p>
3.4	Bleaklow's challenge was successful, the Authority's determination was quashed and the matter remitted back to the Authority to be re-determined.
3.5	As I will address further in my evidence, the Authority has been unable to re-determine the ROMP application as the environmental information it has required, and which is necessary to determine the ROMP application, has not been forthcoming. The permission went into automatic suspension on 1 November 2010.
3.6	To complete the picture, the Bolland family made an incomplete ROMP submission in 1997 which was invalid. Winning and working in the Bolland Land area is therefore effectively suspended. (doc 38)
4.0	<b><u>Matters for Consideration</u></b>
5.0	<b><u>The Prohibition Order</u></b>
6.0	<b>In the two years prior to the making of the Prohibition Order, winning and working of minerals permitted under the 1952 planning permission, did not take place "to a substantial extent"</b>
6.1	As no substantive objection remains to the prohibition of further winning and working I will limit my evidence to a brief explanation of the Authority's position that winning and working has not taken place to a substantial extent in the two years prior to the making of the order and is unlikely to resume.
6.2	<b><u>The Bleaklow Land</u></b>
6.3	RMC, the named ROMP applicant, did not provide any environmental information to inform the ROMP and ceased working (predominantly for limestone) at the site in 1998.

6.4	On 2 July 2003 the Authority received notice from RMC to the effect that RMC would not operate the quarry if the ROMP application was successful and it no longer had any legal interest in the site. (doc 39)
6.5	Bleaklow leased the site to a new mineral operator, which started winning and working mineral, (predominantly limestone), from Backdale in July 2003. The operator later started winning and working mineral, (predominantly limestone) at Wagers Flat. Both these areas are within the area covered by the ROMP application. The winning and working ceased at Wagers Flat during 2007 (doc 40). Winning and working continued for a period at Backdale until the matter of the enforcement action was determined by the Court of Appeal in 2009. The enforcement notice was upheld and the Court determined that limestone could only be won in the course working the fluorspar and barytes under the permission (doc 41), this effectively placed significant limits on the scale of limestone which could legitimately be removed from the site. No working took place at Beacon Rod.
6.6	The mineral operator then ceased mineral working, and subsequently left both Backdale and Wagers Flat. The rights to mineral working reverted to Bleaklow.
6.7	Since September 2009, there has been no lawful working of mineral, and no appropriate environmental and other information, required under the regulations sufficient to progress the ROMP, has been provided for that part of the site.
6.8	At a meeting on 11 August 2015 Bleaklow's representatives admitted to removing a quantity of limestone fines from the void at Wagers Flat for use in the foundations of nearby building work. There was no permission for this work: <ul style="list-style-type: none"> <li>• Planning permission 1898/9/69 was suspended, and in any case</li> <li>• the limestone on the site was not worked legitimately under the Court of Appeal's interpretation of what the permission allowed.</li> </ul>
6.9	<u>The BFL Land</u>
6.10	With respect to the area within the 1952 permission subject to the Prohibition Order and where BFL's mineral interests lie, no opencast working has taken place since the late 1980's, when working of the named minerals (fluorspar, barytes and lead and any other mineral won in the course of working those minerals) took place by the then Bleaklow Mining Co Ltd within some of the veins (part of Catlow Rake, Dog Rake and Red Rake) in the Peak Pasture area.
6.11	By the late 1980's Laportes had ceased opencast working of the named minerals in the eastern end of Longstone Edge and were carrying out restoration works. Underground working was continuing to take place using the access from Sallet Hole adit entrance into Deep Rake, heading westwards for extraction within High Rake and Bow Rake at the western end of Longstone Edge. The plans submitted in the ROMP also showed that Laportes was proposing

	<p>opencast working of the named minerals in only two limited areas in Longstone Edge East, namely Unwin Vein and the western end of Red Rake during the first 15 years, with the inference that further deeper working would take place at Unwin Vein. No opencast working took place in these areas between 1997 and 1999.</p>
6.12	<p>Laportes' interest was acquired by Glebe Mines in 1999. No opencast working was undertaken by Glebe in the areas identified in Red Rake or Unwin Vein or underground working in Deep Rake in the BFL land between 1999 and 2012. Glebe did not undertake any working in the Peak Pasture area identified in the ROMP submission. In fact Glebe submitted the 2000 consolidating application to focus their vein mineral working within the western end of Longstone Edge rather than the eastern end (doc 22). At that time Glebe representatives considered there was no evidence to support any significant reserves of the named minerals in the area.</p>
6.13	<p>In 1997 the initial ROMP application (doc 24) included some information about trial trenching for vein minerals carried out by Laportes along certain known vein structures containing vein mineralisation, but no operational working ever took place arising out of this trial trenching. Historically Dog Rake, Catlow Rake, Red Rake and Gospel Rake have been extensively worked for of the named minerals but this had ceased by the late 1980's</p>
7.0	<p><b>What is the likelihood of resumption of winning and working "to a substantial extent"</b></p>
7.1	<p>I have reviewed the evidence in the Authority's files on the quality and quantity of remaining mineral and constraints on winning and working. My conclusions are set out in the following paragraphs.</p>
7.2	<p>Fluorspar is the target mineral (although it is accepted that a certain quantity of limestone can be sold but this is very limited (to mineral won in the course of working) by the Inspectors decision on the 2009 enforcement notice, as upheld by the courts. On the basis of the evidence, only limited quantities of remaining fluorspar can be inferred.</p>
7.3	<p>Vein mineral extraction is not financially viable. The ROMP submission makes it clear that the winning and working of limestone (which is not permitted) would be necessary to cross subsidise the working of vein minerals.</p>
7.4	<p>On the basis of the evidence available it appears that the quality and quantity of mineral remaining on site is such that mineral working would not be viable and is unlikely to resume.</p>
7.5	<p>The companies house returns for BFL show that the company's net worth was £-718,968, with net liabilities of £2,139,266. It has assets of £3,883,032 and cash of £161,926 (doc 4).</p>
7.6	<p>Published information on forecasts of trends in fluorspar production and markets for this products shows that there is no shortage of fluorspar and as at 2013 prices remain soft or decreasing.</p>

8.0	<b>Is there a genuine intention to resume working?</b>
8.1	Backdale has not been subject to winning and working since 2009, and at that time limestone was the target mineral (contrary to the limitations of the planning permission). The winning and working of fluorspar, barytes and lead as the primary target mineral has not taken place since before 1997.
8.2	No lawful winning and working has taken place at Wagers Flat since 2007. Prior to this, work focused on limestone extraction rather than fluorspar (contrary to the limitations of the planning permission). In 2009 removal of some limestone stocks took place.
8.3	No opencast winning and working of the named minerals has taken place [elsewhere] within the Order area since 1989.
8.4	Generally the vein structures in the eastern end of Longstone Edge are relatively small in scale and have been extensively worked in the past, leaving limited quantities of vein mineral (fluorspar) that are of sufficient quality to be economically viable to work.
8.5	The failure to pursue the ROMP in the face of the impending Prohibition Order is significant.
8.6	<p>Bleaklow did not provide any updated environmental or other information within the specified periods despite reminder letters, even when there was a risk that a Prohibition Order could be made. There was a widely held view until early 2013 that there was an unqualified duty to make an order, based on para 3.44 of the guidance of 2008 relating to The Town and Country Planning (Environmental Impact Assessment)(Mineral Permissions and Amendment) Regulations which stated that:</p> <p>“...Regulation 26A (18) of the 1999 Regulations provides that, where that deadline is not met, <i>suspension of the mineral permission(s)</i> is automatically triggered. Under the 2008 Regulations, if automatic suspension continues for two years, the MPA is under a duty to make a prohibition order ceasing the whole or parts of a mineral permission(s) relating to development by the operator failing to provide the necessary information”.</p> <p>Despite the widely held view that the Authority was obliged to make an unqualified Prohibition Order, Bleaklow still did not provide the information required.</p>
8.7	Bleaklow has not gone through the necessary steps to pursue a scheme of modern environmental conditions, and has not engaged in the ROMP process as would reflect a genuine intention to work this site. There is no issue of there being any “reasonable excuse” <sup>1</sup> for the failure to provide the relevant environmental information.

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<sup>1</sup> Government guidance of 2008 relating to The Town and Country Planning (Environmental Impact Assessment)(Mineral Permissions and Amendment) Regulations

8.8	In addition, although BFL is successor to the mineral rights previously owned by Glebe, who submitted some environmental information for part of the site prior to automatic suspension, until September 2013 it has not indicated that it would actively pursue its interests there. The Authority has previously made BFL aware that it does not consider Glebe was the ROMP applicant and that the information that Glebe did provide was insufficient.
8.9	BFL withdrew their objection to the making of the Order on 9 July 2015. The reason given in their letter of 9th July (doc 35) was that <i>'The reason for this decision is that recent exploratory work concluded that there was insufficient evidence of an economically viable fluorspar resource within the area covered by the Prohibition Order.'</i>
8.10	In August 2009, when it was finally legally resolved, by the Court of Appeal, that there were limits on the amount of limestone that could be removed and sold in the course of winning and working the fluorspar and barytes under the permission, Bleaklow, and its lessee operator at the time, ceased mineral working at the site. Subsequently, there has been no working of mineral. Following the purchase of the site in 2012, the new owner's focus has been to suggest, in the course of pre-application discussions, non-minerals proposals as an alternative for the site. Indeed, in its comments upon the Authority's Statement of Case (doc 34] the representative of Bleaklow states that "for the avoidance of doubt Bleaklow Industries Ltd.'s position is that it is not a minerals operator".
8.11	A planning application has been received for an industrial building on part of the land. If permission is granted for this, it would be incompatible with the activity of mineral winning and working on the land.
8.12	The Bolland family can no longer take any part in the ROMP process. There is no proposal to extract mineral on their land and they do not object to the making of the Prohibition Order (doc 6)
9.0	<b>Are there any other material considerations that should be taken into account in deciding whether to confirm or modify the Prohibition Order?</b>
10.0	<u>The Sufficiency of the ES</u>
10.1	The various environmental information submitted does not meet the requirements of an Environmental Statement within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended) because the information necessary for a screening opinion has not been provided and all of the provisions referred to in Regulation 26A (17) which are relevant to the application have not been covered or are insufficient.
10.2	Under paragraph 9 (10) of Schedule 13 of the Environment Act 1995, further information was first sought by the Authority within the specified period of 1 month of the submission of the ROMP in March 1997.

10.3	On 12 August 2008 the Authority issued notification requiring information to enable the Authority to adopt an up-to-date statutory screening opinion under Regulation 5(3) of the 1999 Environmental Impact Assessment Regulations, as amended (docs 15&16). Due to legal uncertainty about the scope of the planning permission at the time, the Authority considered that it was reasonable to agree extensions of time for the submission of the required information pending the final outcome of legal action taken by Bleaklow (docs 42 - 63).
10.4	On 30 July 2010 the Authority wrote to Bleaklow (doc 42) and requested the information that was required to enable the Authority to undertake a screening opinion. In doing so it referred to the 2008 Regulation 5(3) notification and granted a final extension of time for submitting the information until 31 October 2010. It was made clear in this letter that a failure to provide the information would lead to the automatic suspension of minerals development under the 1952 planning permission by virtue of the amended 1999 Regulations. Nothing was received from Bleaklow.
10.5	On 30 July 2010 the Authority also wrote to Glebe and advised them that the Authority did not consider that Glebe was an applicant in respect of the ROMP. The letter advised them that if they considered themselves to be an applicant, they should provide the information required to enable the Authority to undertake a screening opinion, and provide an explanation of the basis on which they considered themselves an applicant.
10.6	Some limited information was received from Glebe in respect of part of the site (doc 67). It is noteworthy however that: <ol style="list-style-type: none"> <li>1. Glebe was not an applicant in respect of the ROMP application, and;</li> <li>2. the information was insufficient for the Authority's stated purposes.</li> </ol> <p>This was set out in correspondence (doc 68).</p>
11.0	<u>Whether there is a reasonable excuse for the continuing delay in providing the necessary information</u>
11.1	Correspondence was sent to Bleaklow's representative on the 20 February 2012 (doc 14 page 227) reminding the company that the mineral permission was in automatic suspension and that, if the required information was not submitted by 31 October 2012, the Authority had a duty under the Regulations to consider making a Prohibition Order, and thereafter a duty to make such an Order if it was satisfied that working had permanently ceased. No formal alternative proposals have been received and no information has been submitted to enable the Authority to make a screening opinion.
11.2	Bleaklow's representative wrote to the Authority in letters dated 5 September 2012 (doc 13 page 200) and 11 June 2013 (doc 13 page 215). The first letter sets out that the owner is considering a number of potential options. In relation to mineral working it states: <i>'...we do not see any immediate benefit in Coverland UK Ltd attempting to de-stall the ROMP. At the same time we cannot discount</i>

	<i>the potential for some mineral recovery and do not see that formal proceedings to prohibit future mineral working is an appropriate way forward in such circumstances where other options may secure better sustainable outcomes in a cost effective manner and also have the potential to bring some closure on the question of future mineral operations.'</i>
11.3	The 2008 Guidance on Environmental Impact Assessments and ROMPS advised at paragraph 3.11 that where applicants are intending to consolidate or agree exchanges of areas for mineral working they may be unwilling to provide the information to progress a ROMP as it might be unnecessary. In these circumstances paragraph 3.13 indicated that the Minerals Planning Authority may extend the period for submission of information where there is a clear and limited timescale for a decision and no environmental harm will result. However, this is not applicable in this case as the landowner was not seeking alternative mineral development. Furthermore a decision was unlikely in a clear and limited timescale. (doc 69 and doc 13 pages 200, 203, 212,214,& 215)
11.4	A delay in providing environmental information for the purpose of keeping a mineral permission extant in order that it could be traded to facilitate non-minerals development which is contrary to the Peak District National Park Development Plan would not be in line with the circumstances set out in the Guidance.
11.5	Taking these matters into account, I consider that there is no basis for asserting that that there is a reasonable excuse for failing to provide the necessary information.
12.0	<u>Whether an operator who has provided all the information that could be reasonably requested of him would be affected by the order</u>
12.1	No operator has provided all the information reasonably requested of him.
12.2	The process for the ROMP application was set out in the 2008 Regulations. Accompanying guidance indicated that once the tests are met the Authority is under a duty to make a Prohibition Order (as set out in para 8.6). If an operator does not want to be subject to a Prohibition Order then it is highly likely that it would actively pursue the ES so that the ROMP can be determined. The fact that the operator has not done so is significant.
13.0	<b>If the Prohibition Order is confirmed, are any modifications required?</b>
14.0	<u>Are the requirements contained in the Prohibition Order appropriate and proportionate?</u>
14.1	In the Prohibition Order the Authority attached restoration plans for two parts of the Prohibition Order area. The plan for Backdale was drawn up by GWP and evidence is submitted from them in this respect.
14.2	There are both local and national policies relating to the need to

	adequately restore mineral sites.
14.3	The National Planning Policy Framework (NPPF) was published on 27 March 2012. In the National Park the development plan comprises the Authority's Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001.
14.4	Seeking restoration at the end of mineral working is an accepted requirement in all circumstances, para 143 of the NPPF requires that MPA's ' <i>put in place policies to ensure worked land is reclaimed at the earliest opportunity, taking account of aviation safety, and that high quality restoration and aftercare of mineral sites takes place, including for agriculture (safeguarding the long term potential of best and most versatile agricultural land and conserving soil resources), geodiversity, biodiversity, native woodland, the historic environment and recreation.</i> '
14.5	Securing appropriate restoration is particularly important to ensure the conservation and enhancement of the valued characteristics of the National Park. The NPPF states that " <i>115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.</i> ".
14.6	The restoration proposed in the Prohibition Order is designed to ameliorate the visual impact of the site and reduce its impacts on the landscape. The scheme attached to the Order is designed to ensure that the site contributes to the Biodiversity Action Plan targets for the National Park. The scheme is designed to protect the geological (paleontological) interests on the site.
14.7	This is in line with LDF policy MIN1 which requires that 'Restoration schemes will be required for each new minerals proposal or where existing sites are subject to mineral review procedures. Where practicable, restoration will be expected to contribute to the spatial outcomes of the Plan (either generally or for the constituent landscape character areas of the National Park). These outcomes will focus mainly, but not exclusively, on amenity (nature conservation) after-uses rather than agriculture or forestry, and should include a combination of wildlife and landscape enhancement, recreation, and recognition of cultural heritage and industrial archaeological features.'
14.8	Although the Order is not a ROMP determination, Min 1 is still considered relevant as the Order effectively concludes the matter of the old mineral permission, in the absence of a ROMP scheme which the Authority could determine.
15.0	<u>Are any modifications required?</u>
16.0	<u>Public Footpath Hassop 10</u>
16.1	A Footpath Diversion Order was confirmed on 24 November 2015 and

	will come into force after 28 days from the date when the Authority certifies that the Works required by the Footpath Diversion Order have been undertaken and completed to its satisfaction. (doc 70)
16.2	The Prohibition Order was made prior to the Footpath Diversion Order Application. A footpath is shown on the restoration plan running through the site closer to its original route on Plan 2 attached to the Order. It is accepted that the Prohibition Order cannot compel the footpath to be aligned on this route, the plan merely shows that the route could theoretically have been aligned in this location. The schedule in the Prohibition Order requires the recipient to <i>'regrade the area shown outlined in blue on plan 2 to the levels attached hereto, placing soils and scalplings as final surface cover.'</i> No reference is made to the footpath illustrated on the plan.
16.3	The route set out in the Footpath Order does not remove the requirement for the bunding works, which are needed for site safety reasons, to act as a barrier for rock fall from the remaining quarry face at the rear of the site. The bunding would also provide landscape and visual benefits by the reducing the appearance of the scale of the site, in particular from the footpath near Bank Wood.
16.4	The use of material from the site in the creation of the bund is consistent with the 1952 permission which requires that mineral waste be deposited within excavations.
17.0	<u>Certificate of Lawful Use</u>
17.1	On 30 <sup>th</sup> January 2014 a Certificate of Lawful Use for an area of land at Backdale was issued to Bleaklow by the Authority (doc 10); this land is shown in cross hatching on the plan accompanying the certificate and the lawful use is described as the manufacture of matured slaked lime putty and pre mixed mortars from imported raw materials, and use of the land for ancillary offices, and is subject to the limitations and stipulations set out in the certificate.
17.2	The Prohibition Order does not seek to, and would not, if confirmed, fetter the development for which the Certificate of Lawful Use was issued.
18.0	<u>Palaeontological Interest</u>
18.1	I became aware in June 2015 of palaeontological interest discovered on the site. I contacted Professor Jennifer A. Clack ScD FRS, Professor and Curator of Vertebrate Palaeontology at the University Museum of Zoology, Cambridge University. Professor Clack advised me that they had recovered from the site rare skeletal material of fossil Carboniferous early shark relatives (chondrichthyans). She later advised that: <i>'Very few skeletons of Carboniferous chondrichthyans have been recovered from the UK. In general, chondrichthyans do not calcify their skeletons robustly and so the preservation potential of their skeletal element is low and fossil finds are rare. Those that do exist from the Carboniferous are all found in Scotland. Therefore these are the first semi--- articulated Carboniferous chondrichthyans found in England.'</i> (doc 71)

18.2	Form the work done by Professor Clack, specimens of Carboniferous chondrichthyans have been found in two limestone beds at Backdale, the northern and southern beds (shown on composite photograph in doc 71)
18.3	The Authority informed Natural England of the interest as they are the government's adviser for the natural environment in England. Natural England has added the site to the Geological Conservation Review List, which is the first step towards legislative protection.
18.4	<p>The Authority has taken advice from Natural England about what works would be necessary to avoid harm to the palaeontological interest and Dr David H Evans Senior Environmental Specialist – Stratigraphy has advised: <i>'If there is to be any chance of facilitating further research on, and collection of additional material from these horizons, the most practical way forward would be to remove the tipped material from the two areas concerned so that the final surfaces prior to the tipping can be re-exposed.'</i></p> <p><i>In order to maximise the likelihood of recovering any further shark-bearing material while the tipped material is being removed, as well as to relocate the in situ interest features, a geological/palaeontological watching brief would be most appropriate.</i></p> <p><i>The nature of the interest is such that it should be considered as an addition to the Geological Conservation Review (GCR) series of sites, and as such, would be considered of national importance if added to the review.</i></p> <p><i>I will be preparing and processing the paperwork in order to propose this site as an addition to the review series over the next few weeks and would hope that it may be (subject to consultation) ratified as a GCR site early in the new year.'</i></p>
18.5	On the basis of the advice received from Natural England, the scheme attached to the Order already incorporates the removal of spoil from the surface of the land and is therefore considered to be an appropriate scheme to protect the palaeontological interest on the land.
18.6	Notwithstanding that the restoration requirements in the notice are entirely reasonable, to fully take account of these changes in circumstance which have come about since making the Order, the Authority wishes to amend the restoration proposals to ensure that the fossil interest is properly considered. We ask that the appended Schedule, which takes into account Natural England's advice, substitutes the Schedule in the Order.
18.7	The scheme attached to the Order is reasonable and proportionate and adequately addresses the need to protect the palaeontological interest on the land. If the Secretary of State does not find that the scheme attached to the Order (with the amended schedule) is reasonable and proportionate, and finds that the removal of the spoil is not reasonable, or necessary to protect the palaeontological

	<p>interest, then the Authority would ask that an alternative scheme incorporates:</p> <ul style="list-style-type: none"> <li>• A contiguous bund but with a revised profile and height (at least as high as that in place currently where it exists) across the middle of the site on an east west line;</li> <li>• At least partial regrading of the spoil heap to the west of the site (arising material to be used in the creation of the contiguous bund);</li> <li>• At least some minor regrading of spoil to the eastern end of the site;</li> <li>• the retention of the trees if the tip in the middle, on the south side of the existing (non contiguous) east west bund, behind the lime plant is to be retained;</li> <li>• The restoration of the site by way of natural regeneration.</li> </ul>
9.6	The additional steps set out in the appended schedule are both reasonable and proportionate given the extent and rarity of the palaeontological interest.
	<b>Wagers Flat – Plan 1 attached to the Prohibition Order</b>
9.7	The plan for Wagers Flat is based on a survey produced by GWP, is appropriate restoration for the site, and incorporates the principle of restoration to an agricultural use, with the use of locally collected seed to enhance the biodiversity of the area in line with the Authority's Core Strategy and Biodiversity Action Plan.
9.8	It is my view that the specified restoration works are reasonable and proportional. However, Bleaklow have now carried out restoration works which are not in accordance with the scheme proposed in the Schedule in the Order or Plan 1 in the Order. I refer to the plan submitted on behalf of Bleaklow by its agent on 06 May 2014 and the attached plan (doc72) showing the effect of the regrading works and resulting levels.
9.9	The Authority has considered these works carefully and is willing to agree to these works in substitution of those specified in the schedule in the Order. The plan shown at doc 72 shows a differentiation between land shown coloured beige and pink. The beige appears to be in the location of actual tracks and are not part of the restoration scheme. The track to the north in particular, is not considered acceptable, does not benefit from permitted development rights and it must be made clear that there is no permission implied for the tracks by agreeing to the levels on this plan.
9.10	In agreeing the principle of these alternative works an email was sent to the agent on 2 April 2014 (doc 73) setting out seeding which would be acceptable to the Authority. However, the site was not seeded in accordance with the email.
9.11	Further alternative seeding requirements were agreed with the objector in August 2015, and the site was seeded with some locally collected seed, and with an agreed commercial mix of seed, with the agreement of the Authority.

9.12	We therefore ask the Secretary of State to substitute plan 1 in the Order with plan JCP/MSE/3411-1 (doc 72) produced by John Church Planning for the Objector, showing the alternative levels on the site.
9.13	We also ask that the schedule in the order be substituted for the schedule that is Appendix 2 to my proof of evidence.
9.14	The aftercare set out in the notice is still applicable and should remain.
9.13	<u>Human Rights</u>
9.14	In my opinion the requirements of the Prohibition Order are necessary and proportionate to enable compliance with the EIA Directives and to protect the environment. The making of the Prohibition Order and the imposition of restoration and aftercare requirements are a justified and proportionate means of achieving the legitimate aim of planning in the public interest.

### **Glossary of Names Used in this Statement**

**“Authority”** The Peak District National Park Authority

**“Bleaklow”** Bleaklow Industries Ltd who own the freehold land except a small area west of Backdale and own the mineral rights south of Bramley Lane.

**“BFL”** British Fluorspar Limited, who acquired the interests formerly held by Glebe Mines Ltd (**Glebe**), owns the vein mineral rights, and the limestone disturbed, to the north of Bramley Lane and a limited area to the south of Bramley Lane.

**“Coverland”** Coverland UK Ltd purchased Bleaklow in 2012 together with assets, including the land that it owned which was subject to the 1952 permission. The name Bleaklow Industries Ltd was retained

**“Glebe”**, Glebe Mines Ltd formerly owned the vein mineral rights, and the limestone disturbed, to the north of Bramley Lane and a limited area to the south of Bramley Lane.

**“GWP”** geotechnical specialists Geoffrey Walton Partnership employed by the Authority

**“Ineos”** Ineos Fluor who acquired Glebe in or around 2008

**“Laportes”** Laporte Minerals were predecessors of Glebe in terms of their mineral and property interests.

**“Peak Pasture”** is in an area within the 1952 permission

**“RMC”** RMC Roadstone Ltd – Eastern were the predecessors of the legal interests of Bleaklow

**“ROMP”** review of old minerals permissions under the Environment Act 1995

**“the Bolland family”**. The surface of a small area to the west of Backdale is owned by the Bolland family Bleaklow own the mineral rights to this land.

## Appendix 1: History

1	<b><u>History</u></b>
1.1	Planning permission reference 1898/9/69 (“the 1952 permission”) for Deep Rake, Hassop (Longstone Edge East) was granted in 1952, by the Minister of State of Housing and Local Government, for the winning and working of fluorspar and barytes and for the working of lead and any other minerals won in the course of working these minerals (the named minerals) and the deposit of mineral waste from that area (doc 9). The permission originally covered around 155 hectares.
1.2	The permission area was reduced in 2002 by the revocation of part of the 1952 permission and other old mineral permissions included within the Longstone Edge Review of Old Mineral Permission (ROMP) area, as part of a consolidating permission (doc 10). The unrevoked part of the 1952 permission area, now referred to as Longstone Edge East, amounts to 138ha, and is subject to the stalled ROMP.
1.3	A ROMP application for determination of conditions under Schedule 13 of the Environment Act 1995 ( <b>the ROMP application</b> ) - which included the review of the old mineral permission originally granted in 1952 - was submitted in March 1997 (doc 11). RMC was the applicant. The application included a submission for working which was made jointly with Laportes. The scheme broadly showed (within the prohibition order area) opencast working at Backdale, and Peak Pasture for limestone, and opencast working along vein structures at Wagers Flat, Beacon Rod, Unwin Vein and Red Rake and underground working at Deep Rake during the first 15 years. The applicant proposed to submit areas of working details in the periodic review.
1.4	No Environmental Statement was provided with the ROMP application since at that time the mineral review Regulations did not require one to be submitted. Subsequently, I understand, case law held that ROMP applications should be accompanied by an Environmental Statement where the development had a significant impact on the environment. In view of this, the Authority asked the applicant for an Environmental Statement but RMC declined to provide one (doc 12).
1.5	The Authority determined the ROMP application without an Environmental Statement in order to avoid a deemed approval of the submitted scheme. The determination included a curtailment of the extent of working at Peak Pasture based on the Authority’s interpretation of what mineral working the 1952 permission allowed. Bleaklow (as a freehold owner but not the ROMP applicant) challenged this determination through judicial review proceedings in the High Court. Bleaklow’s challenge was successful, the Authority’s determination was quashed and the matter remitted back to the Authority to be re-determined.
1.6	RMC, the named ROMP applicant, did not provide any environmental information and ceased working at the site in 1998. Some environmental information was submitted on behalf of Bleaklow in July 2000, but the Authority declined to accept it as a formal submission because Bleaklow was not the ROMP applicant. The Authority could not re-determine the application until the information was received from the applicant. The

	ROMP application became a stalled ROMP application.
1.7	On 2 July 2003 the Authority received notice from RMC stating: "Bleaklow and their advisors are pursuing the [ROMP] application acting as agent for RMC ..... The application is therefore moving forward in the RMC name with this Company's authority although RMC have declared that it will not operate the quarry if successful and it no longer has any legal interest in the site. ....further questions related to the application should therefore be directed at Bleaklow". (doc 13)
1.8	A new mineral operator started extracting limestone from Backdale in July 2003 (doc14) and later carried out winning and working mineral, predominantly limestone Wagers Flat, both areas lying within the area covered by the ROMP application. The Authority considered that the 1952 planning permission did not allow for the winning and working of limestone and therefore that the operations were unlawful. The Authority first took enforcement action in 2004, and between then and 2009, Bleaklow and the Authority were involved in planning enforcement appeals through public inquiries and the courts.
1.9	In August 2008 the EIA Regulations were revised with the purpose of ensuring that ROMP applications which were stalled for lack of environmental information could be determined. The Authority sent a notice to Bleaklow, requiring the submission of additional information to enable the Authority to carry out a screening opinion (doc15). A copy was also sent to Glebe because of its mineral interests in the land (doc 16). Extensions of time in which to provide the information were agreed by the Authority, pending resolution of Bleaklow's legal challenges which followed the Authority's enforcement action against the unauthorised winning and working of limestone at Backdale. Bleaklow's challenge was eventually unsuccessful.
1.10	The Authority set 31 October 2010 as the final deadline for submitting the information required to carry out a screening opinion (doc's 17 & 18). Bleaklow failed to provide any of the required information by that deadline, or since. On the 29 October 2010, some information was submitted to the Authority by Glebe (doc 19). This information was insufficient for EIA purposes, but in any event, Glebe was neither the named ROMP applicant, nor its agent, and the Authority has always advised that it did not consider Glebe is entitled to pursue the application (doc 16 & 20).
1.11	In December 2010 solicitors acting for Glebe wrote to the Authority giving reasons why their client should be treated as the applicant for the ROMP application (doc 21). They referred to Paragraph 3(13) of the guidance 'Environmental Impact Assessment and Reviews of Mineral Planning Permissions 2008 which says that where an original applicant has been superseded, the operator which succeeds them can take the ROMP application forward to determination. Glebe was the successor to Laportes who were not the named ROMP applicant, therefore they were not considered by the Authority to be able to take the ROMP forward as an applicant. The Authority responded in a letter dated 6 January 2011 setting out its position, including what evidence was considered necessary to enable the Authority to treat Glebe as the ROMP applicant (doc 22). No response was received and neither did Glebe provide any additional environmental and other information.

1.12	Since all the necessary information required to carry out a screening opinion was not provided, the permission went into automatic suspension on 1 November 2010.
1.13	The period of automatic suspension could only have been lifted once the Authority received all the environmental and other information it considered to be sufficient to enable the ROMP submission to be determined.

## Appendix 2

### Wagers Flat

#### Restoration

1. Retain the land at the levels shown coloured beige on plan JCP/MSE/3411-1.

Time for Compliance: 1 day from the date of the notice

2. Retain seeding of the land coloured beige on plan JCP/MSE/3411-1 with:
  - (i) 16 patches measuring 4m<sup>2</sup> seeded with locally sourced haymeadow seed to include at least 3 of the following:
    - Ox-eye daisy, *Leucanthemum vulgare*
    - Meadow vetchling, (*Lathyrus pratensis*)
    - Common knapweed, (*Centaurea nigra*)
    - Rough hawkbit, (*Leontodon hispidus*)
    - Hay rattle, (*Rhinanthus minor*)
    - Common catsear, (*Hypochaeris radicata*)
    - Autumn hawkbit (*Scorzoneroides autumnalis*)

- (ii) 50% of the remainder of the land seeded with:
  - Meadow Fescue (*Festuca pratensis*)- 60%.
  - Common Timothy (*Phleum pratense*)- 15%
  - Slender Creeping Red Fescue (*Festuca rubra*)- 15%
  - Cocksfoot (*Dactylis glomerata*)- 5%
  - White Clover (*Trifolium repens*)- 5%

- (iii) 50% of the land coloured beige on plan JCP/MSE/3411-1 with locally collected grass seed and general purpose meadow grass seed comprising:

Common Bent( <i>Agrostis capillaris</i> )	10%
Crested Dogstail ( <i>Cynosurus cristatus</i> )	50%
Slender-creeping Red-fescue ( <i>Festuca rubra</i> )	35%
Smaller Cat's-tail ( <i>Phleum bertolonii</i> )	5%

Time for Compliance: 1 day from the date of the notice

#### Aftercare for five years after the site has been seeded.

3. After seeding the land coloured beige on plan JCP/MSE/3411-1, carry out annual spot treatment in June with glyphosphate of:
  - common ragwort (*Senecio jacobaea*),
  - spear thistle (*Cirsium vulgare*),
  - creeping or field thistle (*Cirsium arvense*),
  - broad-leaved dock (*Rumex obtusifolius*) and
  - curled dock (*Rumex crispus*).
4. On the land coloured beige on plan JCP/MSE/3411-1, no grazing or mowing shall take place in May, June or July. If the land is not grazed from August November it shall be mowed annually in both August and October.

## **Backdale**

5. Regrade the area shown outlined in blue on Plan 2 to the levels attached hereto, using an appropriate machine fitted with a toothless bucket placing soils and scalpings as a final surface cover.

Time for Compliance: 12 months from the date of the notice.

6. During all works to regrade the area shown outlined in blue on Plan 2 carried out under step 5, a palaeontologist (who shall be agreed in advance by the Peak District National Park Authority) shall be on site to carry out a Watching Brief as outlined below to ensure the preservation by record of palaeontology deposits, the presence and nature of which could not be established in advance of the regrading.

### **Watching Brief**

Groundworks shall be undertaken using an appropriate machine fitted with a toothless bucket and working under palaeontological supervision present during all works which may affect palaeontology remains.

During each phase of regrading the presence/absence of palaeontological features should be noted. If palaeontology features are identified then regrading works shall be suspended for a sufficient period of time to allow features to be dated, characterised, recorded, and where appropriate excavated.

Features should be recorded in plan at an appropriate scale and accurately located in relation to the National Grid. Each context should be recorded on pro-forma records which should include the following minimum details: character; contextual relationships; detailed description (dimensions and shape; soil components, colour, texture and consistency); associated finds; interpretation and phasing as well as cross-references to the drawn, photographic and other records available. Each context shall be recorded on an individual record. Sections should be drawn through all significant cut features and levelled to ordnance datum.

A photographic record should be maintained including photos of all significant palaeontological features and overall photos of each watching brief area.

All stratified finds should be collected by context or, where appropriate, individually recorded in 3 dimensions. Un-stratified finds should also be collected .

An interim report together with a post-excavation assessment must be submitted by the palaeontological contractor to the PDNPA and Natural England within 6 months of the completion of fieldwork.

### **Aftercare for five years after the site has been regraded.**

Allow the site to naturally revegetate and carry out annual spot weed killing of the following species:

- common ragwort (*Senecio jacobaea*),
- spear thistle (*Cirsium vulgare*),
- creeping or field thistle (*Cirsium arvense*),
- broad-leaved dock (*Rumex obtusifolius*) and
- curled dock (*Rumex crispus*)