

AGENDA ITEM No. 4

PEAK DISTRICT NATIONAL PARK AUTHORITY
NATIONAL PARK AUTHORITY SPECIAL MEETING
18 SEPTEMBER 2009
STRATEGY & DEVELOPMENT

PART A

1. APPLICATION FOR PLANNING PERMISSION FOR PROPOSED EXTRACTION OF FLUORSPAR ORE AND ASSOCIATED VEIN MINERAL BY OPEN PIT METHODS FROM AN EXTENSION TO THE WORKINGS AT TEARSALL, SOUTH DARLEY (NP/DDD/0208/0104, MIN10213, 30/01/08, 426201/360188)

APPLICANT – GLEBE MINES LTD

Purpose of the report

- 1 At the Authority meeting held on 30 January 2009, the Authority resolved to approve the above application, subject to the Secretary of State (CLG) being informed that the Authority is minded to approve the application as a departure from the development plan, and subject to the prior completion of a S106 legal agreement (Minute 1/09, Appendix 2). The terms of the agreement covered planning gain, including an offer by the applicant not to work 105Ha of land, commonly referred to as Peak Pasture, on the eastern end of Longstone Edge for a temporary minimum period of four years. This land, together with areas known as Backdale, Wagers Flat and Beacon Rod, make up the 1952 planning permission on which there was a disputed legal interpretation as to the extent of working that could take place.
- 2 On 9 February 2009 the Secretary of State (CLG) was sent a copy of the application and other information to consider the proposal. During consideration of the proposal by the Secretary of State (CLG), the Court of Appeal provided a judgment that overturned an earlier High Court judgment. The Court of Appeal upheld the Authority's enforcement action alleging unauthorised winning and working of limestone beyond the scope of the 1952 permission at Backdale, and confirmed a narrow interpretation of the 1952 permission. The Secretary of State (CLG) was duly informed of the Court of Appeal judgment and advised that the landowner of Backdale was intending to appeal the Court of Appeal decision to the House of Lords.
- 3 On 31 March 2009, the Secretary of State (CLG) advised that she did not consider it necessary to intervene and the Authority could decide the application.
- 4 In June 2009 the House of Lords refused to hear a further appeal against the interpretation.
- 5 As some of the details of the S106 legal agreement have not yet been finalised a planning permission decision notice has not been issued. In view of the standing of the Court of Appeal's interpretation of the extent of the 1952 permission, and that a decision notice has not yet been issued, it is considered appropriate to refer the matter back to the Authority to ask whether it wishes to re-confirm its resolution of 30 January 2009.

Recommendation

- 6 **That the Authority re-affirms its decision to approve the Tearsall application (ref NP/DDD/0208/0104) subject to the signing of a S106 legal agreement and subject to conditions as set out in Minute 1/09 of the Authority.**

Proposals

- 7 A copy of the Authority's report of 30 January 2009 containing details of the application and consideration of the proposal is attached as Appendix 1. In summary the proposal is for the extraction of 660,000 tonnes of fluorspar ore from 10.37 hectares of land over a 6 year period, with a further year to complete restoration. Extraction would take place progressively in phases working in an east to west direction, progressively moving northwards (down slope) to a maximum depth of 45 metres. Limestone other than that contained in the fluorspar ore will be retained on site for use as backfill to restore progressively the existing quarry and the extended workings to an agricultural grazing after-use. There would be between 110,000 and 120,000 tonnes of fluorspar ore extracted per annum, involving a maximum 50 vehicle movements (25 in and 25 out) daily Monday to Friday. All the mineral removed would be taken to Cavendish Mill, Stoney Middleton for processing. Proposed hours of working are 7:00am to 5:30pm, Monday to Friday, and 7:00am to 1:00pm Saturday for maintenance work only. A bridleway and footpath are proposed to be permanently diverted along the western perimeter of the application area. At the end of restoration a further footpath would be created across the site. The application was accompanied by an Environmental Statement.

The applicant offered the following planning obligations in support of the planning application:

- Not to work its mineral rights in an area of 105Ha on the eastern end of Longstone Edge for a minimum four year period and whilst the company is extracting fluorspar from Tearsall under this current planning application.
 - An additional 5 years of aftercare at Tearsall beyond the 5 year period already provided by the formal aftercare provisions
 - The principle of investing in underground workings and to achieve a requirement of a minimum of 15% of crude ore production from underground sources by the end of 2011.
 - A bond to secure restoration at Tearsall.
 - To pay for an annual inspection of the highway, plus repairs to the highway margins as necessary due to damage caused by lorries associated with the development.
- 8 The report concluded that the proposed development at Tearsall would constitute a major development and would not generally be acceptable in policy terms. Alternative sources of fluorspar were considered to be available, and it had not been demonstrated that the development was required to meet a national need which overrides the need to protect the Park and there were significant landscape and visual impacts and adverse amenity impacts arising from the proposed workings, including traffic. However, the planning gain offered was sufficiently material to tip the balance in favour of recommending approval of the proposal.

- 9 In January Members of the Authority having taken account of the report and the representations made, and following considerable debate resolved to approve the application, subject to referral to the Secretary of State (CLG) and the signing of a legal agreement.

Re- Consultations

- 10 On 13 August 2009 a letter was sent to all those parties previously consulted on the planning application, advising that as the S106 had not yet been signed and the standing of the Court of Appeal judgment meant that it was appropriate to refer the matter back to the Authority to ask whether it wishes to re-confirm its decision of 30 January 2009, with the focus being specifically on the planning gain issue. The same information was also included in Site notices installed at Tearsall and in an advertisement in the local press.

Authority's Ecologist – No further comments – all the ecological issues identified at the site have been covered by the planning conditions that have been drawn up in response to this application.

DCC County Planning – Comments previously submitted remain valid.

South Darley Parish Council makes the point that it has objected to applications at Tearsall many times, and were disappointed to see the current matter recommended for approval when some matter were not resolved. The Parish Council point out that the Authority's s landscape officer still has numerous concerns about visual impact and that mitigation will not overcome this, and he considers that the proposed screen mound will have little effect on distant views. Furthermore he doubts the restoration plans will be fully adhered to having regard to Glebe's previous history. The PC also considers that the acoustic and visual impacts stated are not accurate as there are dwellings at the same level as the proposed quarry on the opposite hillside, some 600m away. The letter also queries the matter of potential damage from blasting, and considers that this has not been adequately investigated. Concerns arise due to the age, and associated structural integrity, of some properties, which mean the risk of vibration damage has not been assessed by the applicants. The PC also refers to the destruction and damage to ancient tunnels and historic mining remains. The letter received also makes the point that the earlier consideration focussed on the fact that the offer to delay working at Peak Pasture, would enable resolution of the contentious 1952 permission at Longstone Edge, and that as this matter has now been determined, the 4 year delay offered is now insufficient to warrant supporting the application as a significant departure from planning policy. Furthermore the PC considers that the investigation of underground mining should be established planning policy. In conclusion the PC states that the planning gain offered by Glebe does not constitute exceptional circumstances sufficient to warrant granting consent as the trade off is at a distant unrelated site, without benefit to local communities which will experience only the negative effects of this major development, and the application should therefore be refused.

Representations following re-consultation and advertising

- 11 A letter has been received from a resident of Wensley commenting on the planning gain issues. The local resident's comments are summarised as follows. The aftercare, bond and highway inspection are issues directly related to the site at Tearsall and although important are not exceptional. The gain relating to 15% production from underground sources is a matter the company should be doing anyway. If planning authorities continue to grant easier opencast options there is no incentive to go

underground. This is not exceptional and the applicant should be forced to go underground by refusing the application. The only gain considered exceptional related to the four year delay in quarrying at Longstone Edge to allow for the legal process to be resolved. The legal process has now been resolved; having achieved a definition, thus there is no benefit in maintaining a 4 year delay. The 1952 permission allows the extraction of fluorspar either now or in the future is of little consequence as the effect on the Park will be the same. There is more to lose in having two holes in the Park rather than one that already has permission. The buy out of the 1952 permission should stand on its own merits and not linked to Tearsall or any other site.

A letter from another resident of Wensley has been received, stating that the previous objections raised in 2 earlier letters still apply, which refer to matters of loss of view and tranquillity, likely noise pollution, loss of peaceful environment, deleterious to Conservation Area, traffic generation, footpath diversions, disruption to skyline, loss of stone walls, possible subsidence, and effect on property prices. The resident considers that any Member voting in favour of the proposal should be ashamed of themselves, as objections raised by residents of Wensley and Bonsall have been given little weight. The letter states that only spurious arguments exist in favour of the plans, none of which are relevant to the impact of the proposals on residents. The resident considers that traffic in Wensley has greatly increased in recent years due to retail and other development in Matlock, resulting in diminution of quality of life already. Furthermore there are already problems caused by the National Park entering into agreements with mining companies, particularly having regard to the view that mining companies are motivated by financial gain. In conclusion the resident makes the point that the reconsideration of this application allows a second chance to consider the proposal and reclaim the moral high ground and restore the public's faith.

A further Wensley resident has written to make the point that the original recommendation of approval can be reconsidered, and Wensley hillside should be protected especially as the nation is spending more leisure time in the UK.

A letter has been received from Save Longstone Edge Group (SLEG). SLEG expresses surprise that Glebe state that they will quarry Peak Pasture if the Tearsall application is rejected, since Glebe have repeatedly stated in the past that they do not believe there are significant quantities of fluorspar under Peak Pasture. SLEG is totally opposed to quarrying taking place on Peak Pasture. SLEG believes that further significant fluorspar extraction in the National Park should only be undertaken by underground mining because of the appalling landscape and environmental damage that quarrying has caused. SLEG believe that the Authority should revoke the 1952 planning permission on Longstone Edge, as this key strategic asset at the heart of the Peak District should be restored to become a jewel in the Peak District crown. SLEG views the S.106 agreement as neither necessary nor appropriate, and indeed experience has shown that it would be dangerous. For example, the previous S106 agreement relating to Winster was overturned by the High Court, and SLEG does not see the current issues are sufficiently different to significantly reduce the risk of this happening again, the more so as Glebe have not demonstrated that there is significant fluorspar under Peak Pasture and indeed has always said that there is not.

A letter has been received from the British Mountaineering Council. BMC states that their previous objections still apply, particularly the view that the planning gain offered is not adequate. BMC is concerned that the S.106 might not be robust. The proposal is not a justified departure from planning policy, and the application could be justified only by effective closure of the Peak Pasture site. This application should also be accompanied by landscaping improvements at Cavendish Mill and Blakedon Hollow. If approval is granted it should be on a phase by phase basis with no presumption of approval for subsequent phases if commitments are not met. Furthermore BMC notes

that the applicants could have commenced extraction at Milldam rather than considering Tearsall with its devastating impact on a protected landscape, and therefore there are no operational reasons to justify the proposal, especially as the company has also imported large quantities of ore.

A letter has been submitted by a Glebe employee, who makes the point that the delay in concluding this application has created uncertainty and put local jobs under threat. The letter states that Glebe has critically low ore reserves and the plant only runs half time as a result.

A letter has been received from INEOS Fluor Ltd, who would process the fluorspar produced, stating that they consider that the court ruling on Backdale does not significantly alter the proposals with regard to the planning gain offered for Peak Pasture. They are disappointed at this further delay and hope there will be a rapid conclusion after the committee date. Furthermore this application is important to the economic future of Glebe Mine and INEOS Fluor, particularly as at present ore reserves are low. If Glebe Mines is unable to secure more supplies there would be a loss of 1,400 direct and indirect jobs at INEOS Fluor's base in Runcorn. INEOS Fluor state that they consider that working this site offers a better environmental option to the National Park than working Peak Pasture., as the Tearsall site would be disturbed less, worked for a shorter period and have a lesser visual impact.

Background

- 12 Of particular significance in recommending approval of the proposal as a departure from policy was the offer by Glebe Mines to give up its rights to work minerals at another environmentally sensitive site, known as Peak Pasture, on the eastern end of Longstone Edge, near Bakewell, for at least 4 years and whilst extraction takes place at Tearsall. The 30 January 2009 report to the Authority advised that the temporary curtailment of working at Peak Pasture would provide a sufficient period of time to allow progress and sufficient resolution of the outstanding difficult legal process arising from the 1952 planning permission on the eastern end of Longstone Edge, and a permanent solution to be pursued.
- 13 The 1952 planning permission on the eastern end of Longstone Edge allows 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 permission when granted covered 155 Ha of land. There have been long running and significant disputes over the interpretation of the permission and the extent to which limestone can be removed from the site under the 1952 permission. In 2006 enforcement action was pursued by the Authority since the development at Backdale appeared to the Authority to be the winning and working of limestone rather than the winning and working of fluorspar and barytes and the working of lead and any other minerals won in the course of working. Appeals were lodged against the enforcement notice by Bleaklow Industries Ltd, the land and mineral rights owner, and MMC Ltd, the operator. A public inquiry was held. The Planning Inspector upheld the Authority's enforcement notice, and his decision contained a narrow interpretation of the 1952 permission. Bleaklow and MMC lodged appeals against the Inspector's decision, and the High Court (Sullivan J) quashed the Inspector's decision. The judgment contained a wide interpretation of the 1952 permission.
- 14 At the time of the 30 January 2009 Tearsall report an appeal had been lodged by the Secretary of State (CLG) and the Authority, and permission had been granted to appeal the High Court judgment. There was concern that if the Sullivan judgment was upheld the remaining areas of the 1952 permission could be extensively worked. Various estimates were given as to the extent of fluorspar ore and limestone that may

be present in the Longstone Edge east site, particularly in the Peak Pasture area. For example, at the public inquiry relating to Backdale enforcement notice appeal there was considered to be around 150,000 tonnes of fluorspar ore in the Peak Pasture area north of Backdale. In an application prepared by Glebe Mines for the Arthurton West site, a resource figure of 500,000 tonnes was identified for the areas of Peak Pasture, Wagers Flat, Backdale and Beacon Rod. Glebe Mines provided correspondence in November 2008, advising that the Peak Pasture area contained an inferred resource of 400,000 tonnes of fluorspar ore. No evidence was provided to substantiate this figure. With regard to limestone no information was provided on the amount of limestone that could be removed, although there was a potential resource of around 80 million tonnes of limestone. As such, there was a risk of significant and permanent impact on the landscape, as well as significant and cumulative impacts on the environment and amenities of the locality arising from the scale and extent of working that could occur under the wider interpretation. Potentially the ridgeline on the eastern end of Longstone Edge could be removed leaving an extensive void. The ridgeline is a prominent feature in the landscape viewed from numerous locations in the local middle and distant viewpoints, including Curbar Edge to the east, Bretton Edge to the north and Bramley Wood to the south. There would be consequential impacts on the levels of noise and general disturbance from the operations on local residents and visitors, including the detrimental effects of lorry traffic.

- 15 The proposed planning gain of a temporary suspension of working would provide a sufficient period of time to enable the legal process, and any subsequent appeals, to resolve the interpretation of the 1952 Longstone Edge planning permission to be concluded, and facilitate determination of the stalled mineral review. (The process of reviewing the stalled 1952 planning permission under the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendments) (England) Regulations 2008 was deferred to allow the legal process to be concluded). Alternatively, it would provide time to pursue a permanent solution, for example a buyout package for the site and revocation procedures. At the time of determination of the Tearsall planning application it was expected that the Court of Appeal would provide a judgment in early April 2009, with the prospect of further legal challenges to that judgment continuing to the House of Lords. In this context, it was considered that the offer to suspend any potential working on Peak Pasture was substantive planning gain. Taking this, and all the other issues, into account Members of the Authority resolved to approve the application, subject to referral of the application to the Secretary of State (CLG) and the completion of a S106 agreement, subject to planning conditions.
- 16 Whilst awaiting the decision of the Secretary of State (CLG), on 18 March 2009, the Court of Appeal provided a judgment overturning the High Court judgment, restoring the decision of the Planning Inspector to uphold the Authority's enforcement action and providing a narrow interpretation of the 1952 planning permission covering the eastern end of Longstone Edge. The Secretary of State (CLG) was advised of the judgment and that Bleaklow, the land and mineral rights owner of the Backdale site intended to appeal the decision. On 29 March 2009, the Secretary of State advised that she did not wish to intervene concluding that the application should be decided by the Authority.
- 17 Although the drafting of conditions of the permission to work Tearsall have been completed, the terms of the S106 legal agreement have not yet been finalised. During this period, the challenge by the landowner to the Court of Appeal judgment was rejected by the House of Lords, on 24 June 2009, on the basis that the petition lodged by Bleaklow did not raise an arguable point of law of general importance which ought to be considered by the House of Lords.

Comment

- 18 In view of the standing of the Court of Appeal judgment and the significance placed on the planning gain of not working the eastern end of Longstone Edge for a minimum of four years, it is considered appropriate to refer the matter back to the Authority. The key issue is whether the Court of Appeal decision has had the effect of altering the value of the planning gain sufficient to warrant a re-consideration of the Tearsall proposal.
- 19 The Court of Appeal decision has provided a narrower interpretation of the 1952 planning permission, allowing for the working (and sale) of fluorspar ore and limestone at a ratio not exceeding 2 parts limestone for every one part of fluorspar ore. As such the extent of mineral that can be worked and sold from the site is significantly less than if a wider interpretation had been placed on the 1952 permission that would have allowed for as much limestone as was considered necessary to gain access to the fluorspar ore. However, the permission still allows the operator to remove (but retain on site) as much overburden (limestone) as is necessary in the process of winning the fluorspar ore over the remaining area of the 1952 permission area. No plans have as yet been provided by the various owners/operators of the site through the mineral review process (2008 Regulations) that identifies the extent of future working. In addition, there remains uncertainty over the extent of fluorspar deposits in the area of the 1952 permission. To aid the Authority on this matter, the Authority approached mining consultants, GWP, seeking advice on the nature and extent of potential fluorspar resources within the Peak Pasture area.
- 20 In a report dated 3 August 2009, the consultants, GWP, advised that there is some fluorspar available in the remainder of the 1952 planning permission area that could be worked by opencast methods. However, the amount of fluorspar is uncertain as indicated by the use of the term "inferred resources", which is a class of resource with a very low level of certainty. In Peak Pasture GWP suggests an inferred resource of 180,000 tonnes of fluorspar ore at 16% grade is indicated. This is a highly speculative figure and GWP states that there is only reliable evidence for some 14,000 tonnes of fluorspar ore (at a cut off grade of 16%).
- 21 The advice of GWP is that it is probable that more fluorspar ore exists in the remainder of Longstone Edge, and a figure for an inferred resource of 300,000 to 400,000 tonnes of ore at 16% grade is given (this is also speculative and relates to ore found within 50m of the surface).
- 22 If supplies of fluorspar ore for Cavendish Mill become difficult to find, it seems likely that working on Longstone Edge would be undertaken. Based on the GWP estimates of ore workings would presumably take place over some 4 to 5 years. The tailings that have been tipped into Deep Rake could also prove amenable to re-working.
- 23 Therefore, there remains a risk of serious and permanent impact on the landscape and cumulative impacts on the environment and amenities of the locality from the potential to undertake mineral extraction operations anywhere within the 1952 area on the eastern end of Longstone Edge. There is no control on the extent, scale and number of extraction operations that could take place at any one time in the 1952 permission area, albeit subject to the limited constraints imposed by the conditions attached to the 1952 permission and the restrictions arising from the Court of Appeal judgment.

24 The representations summarised above made a number of other points which can be summarised as follows, with officer responses:

- the applicant should be forced to go underground – the 1952 permission allows opencast working until 2042;
- the legal process has been resolved – a permanent resolution on the ground is not yet achieved, and there remains a slight risk of a further appeal to the European Court of Human Rights;
- the Authority should move to revoke the 1952 permission – this may well be part of a permanent solution but would take time to achieve, particularly if challenged;
- A S106 agreement could be overturned again – officers are satisfied that the process and proposal this time is very different from the Winster case.

25 Since the resolution to approve in January 2009, the Structure Plan has been replaced by the East Midlands Regional Plan. The policies contained in the Regional Plan carry forward the policies that were contained in the Structure Plan. Officers do not consider the policies in the Regional Plan are materially different as to warrant a reappraisal of the proposal. In addition, the limited period of time that has passed since the resolution to approve the Tearsall application does not warrant a re-assessment of the Environmental Impact Assessment.

Submission by the applicants

26 Glebe Mines Ltd has responded to the report of 3 August 2009 which was undertaken by GWP commissioned by this Authority to seek to identify the extent and nature of the fluorspar resource. This response makes the following points.

27 Glebe confirms that the fluorspar quantity identified is an “inferred resource” with a low degree of certainty. However Glebe considers the GWP report reflects a conservative estimate of the resource. Its view is that there is no practical reason why the depth of working used by GWP in its calculations (50m) should not be worked below that depth since the base of mineralisation is a further 70- 80m below that depth, and there are no planning restrictions on the depth of working.

28 Any increase in resource increases the length of time to extract. Glebe considers working would be closer to 10-15 years, and there are no restrictions on working time for these resources. It considers that the 16% cut-off grade used by GWP is arbitrary and in all probability will be lower, with a corresponding increase in the resource tonnage.

29 Glebe agrees that additional resources exist in other areas of the 1952 permission and that it should be feasible to extract and process tailings tipped into Deep Rake during restoration. It says that the report confirms the company’s view that the planning gain not to use the mineral rights on Longstone Edge during the period of the operation at Tearsall is significant in that the mineral present in Peak Pasture and the wider area is a viable alternative. This view applied earlier in the year and still applies now even taking into account the latest legal ruling relating to Backdale and the restrictions imposed on limestone removal.

- 30 Glebe states that in fact the visual impact of operations is likely to be far greater under the current legal ruling as disturbed limestone will have to be retained on-site in significant piles above ground for a longer period of time. Glebe would prefer not to operate on Peak Pasture and considers Tearsall a better all round alternative. However if there was no alternative source of supply, Glebe would have to use whatever permitted resources were available.

Conclusion

- 31 Whilst the Court of Appeal judgment has provided an interpretation of the 1952 permission, the permission still allows the working of fluorspar and limestone won in the course of working the fluorspar (subject to the terms specified by the Court of Appeal judgment) anywhere over the 1952 permission area. The scale and extent of the working and the number of separate excavations that could be established at any given point in time could give rise to serious and significant cumulative environmental and amenity impacts. By comparison the proposed working at Tearsall would be fully restored progressively and would only permit the working of fluorspar ore. The offer to suspend working for a minimum of four years to enable the stalled mineral review process to be concluded and/or to pursue a permanent solution such as a buy-out/revocation order remains a significant and a substantive planning gain.

Corporate implications

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

- 33 **Risk Management:** Legal Services have indicated that the proposed S106 and its obligations would be lawful.

- 34 **Other relevant implications:** None

Background papers (not previously published)

- 35 Fluorspar Quantities Longstone Edge –GWP Consultants - 3 August 2009

Appendices

Appendix 1 - Authority report 30 January 2009
Appendix 2 - Minute 1/09

Report Author, Job Title and Publication Date

Robert Bryan, Head of Planning, Thursday 11 September, 2009.