

Bent David

From: Lomas John
Sent: 24 October 2013 10:31
To: Bent David; Newman Jane; Palmer Clare
Subject: FW: Coverland Ltd - Backdale Quarry and Wagers Flat

From Coverland's agent in response to my reminder.

John

From: Simon Heaton [mailto:simon.heaton@coverland.co.uk]
Sent: 24 October 2013 10:25
To: Lomas John
Cc: peter.hunt@coverland.co.uk; 'Andrew Daly'; 'John Church'
Subject: RE: Coverland Ltd - Backdale Quarry and Wagers Flat

Dear John

My apologies for the delay in responding, although, in truth, I don't think we have much to say at the moment.

Your letter of 3rd September made clear that you were still wrestling with your combined considerations as to whether winning and working of minerals had permanently ceased and whether you have a duty to make a prohibition order. Obviously we have already expressed in writing our views on those matters (as well as outlining them at our last meeting) and are conscious that, as per your letter, we can only properly understand the Council's position once you have reported to the Committee and they have made their decision.

As we had already tabled a series of proposals to you for Wagers Flat and Backdale Quarry and indicated the reclamation/restoration aspects of these schemes we did not really see any merit in having a further meeting in advance of your committee.

I would though point out that your letter indicates that if the Council was to make a Prohibition Order it would need to include a restoration scheme. My client wishes me to re-iterate our view that, in practical terms, this is one of the main considerations and their proposals have the planning benefit of delivering some reclamation/restoration without the need to burden the public purse through the making of an order and assembling an associated restoration scheme. My client's proposals are based on practical/viability/deliverability considerations, which I am sure you will agree the NPPF places great emphasis upon.

We would be most grateful if you and your colleagues, in reporting to the Planning Committee, can make clear that the proposals outlined in your letter have been tabled and we wish the members to be aware that we see the submission and determination of these schemes as a more practical and beneficial way of contributing to the resolution of some long standing issues as opposed to the costs and time delays of pursuing formal prohibition.

In the meantime we are grateful for your advice concerning the potential for greater transparency in the reporting and public involvement in the Committee Meeting on this matter. In this regard, it would be most helpful if you could let us know when your non-confidential report becomes available and also, in due course, confirmation that the item is definitely on the agenda for 15th November Committee.

Best regards.

Yours sincerely

Simon

Simon Heaton

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17 September 2013

Mr John Lomas
 Peak District National Park Authority
 Aldern House
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Dear John

LONGSTONE EDGE EAST, REVIEW OF OLD MINERAL PERMISSION

Further to your email of 6 September 2013 regarding the above matter, I thought it may be of some assistance if I summarised the British Fluorspar Ltd (BFL) position regarding this issue prior to your report to committee on Friday 11 October.

Longstone Edge East is the 1952 ministerial permission covering Backdale, Wager's Flat and Peak Pasture although part of the original consent, the active open cast workings on Longstone Edge are subject to a separate, modern planning permission. The Longstone Edge East area is held within a number of different land ownerships with BFL as successor in title to Glebe Mines Ltd, retaining the interest in the minerals north of Bramley Lane and in the area known as Peak Pasture. These areas have never been worked but benefit from the 1952 consent as interpreted by the Court of Appeal i.e. the right to extract fluorspar, barytes and limited amounts of limestone won as a result.

The Environment Act 1995 provides for periodic reviews of mineral planning permissions (RCMPs) and the EIA Regulations 2006 provide for the making of a prohibition order where a mineral permission has been suspended for more than two years. Under these regulations the MPA may request an Environmental Statement with a deadline for submission. If this information is not supplied by the prescribed date then the site enters automatic suspension. In the case of Longstone Edge East this date was 31 October 2010. It is understood that Glebe Mines Ltd supplied some information but this was not considered comprehensive by the Authority, nor was it agreed if Glebe Mines Ltd were the applicant for the RCMP.

Longstone Edge East entered automatic suspension on 1 November 2010. In order for the Authority to serve a prohibition order the Authority must be confident that the resumption of winning and working is unlikely. Prior to Longstone Edge East entering automatic suspension the Authority granted permission for the extraction of fluorspar at Tearsall, Boreall Moor, by open pit methods. This planning permission was granted subject to the completion of a S106 Agreement. One of the provisions of the Tearsall S106 Agreement is:

Not to carry out winning or working of fluorspar or associated vein minerals on the Longstone Edge land.

- (a) For a minimum of 4 years beginning on the date of the planning permission; and*
- (b) At any time after the period of 4 years referred to in (a) above whilst the winning or working of minerals is taking place on the Tearsall land pursuant to the planning permission.*

The Tearsall decision notice was issued on 21 June 2010 and the S106 Agreement signed on 24 June 2010. On this basis the Authority recognised Glebe Mines Ltd's right to work their portion of Longstone Edge East and sought a temporary cessation of these rights in exchange for working Tearsall.

British Fluorspar Ltd
 Registration No. 0050701
 VAT No. 137729877

Longstone Edge East went into automatic suspension on 1 November 2010, that is nearly five months after Glebe Mines Ltd agreed not to work their interest for a period of at least four years. It was therefore clear to the Authority that Glebe Mines Ltd still intended to work Peak Pasture and temporarily traded these rights prior to the site entering automatic suspension.

As to the fact that Glebe Mines Ltd did not supply a full environmental statement, the terms of the Teasdale S100 Agreement would have rendered this work abortive and unnecessary. An environmental statement is a complex process with a limited period for which the assessment of impacts and mitigation are applicable. Undertaking the production of an environmental statement when there was no prospect of working Peak Pasture for a period of not less than four years would not represent economic or industry best practice.

On the basis of the above it is considered that it would be inappropriate for the Authority to seek a prohibition order on the land controlled by BFL as it has been clearly demonstrated that there has been an intention to win and work minerals in the Longstone Edge East area under its control.

It should also be noted that the Peak Pasture land is still considered a potentially valuable mineral reserve by BFL and at this period in time it is regarded as an area that will be worked at some point in the future.

I trust that the above clarifies British Fluorspar Ltd's position with regard to this matter. However, it is well understood that this remains a complicated issue interlocked with other external interests. To this end BFL would welcome the opportunity to work with the Authority to explore any mutually beneficial opportunities. If you think there would be some benefit in meeting to discuss the matter further do not hesitate to get in contact.

Yours sincerely

PETER ROBINSON
Chairman, BFL

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Simon Heaton
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Your ref: SCH/HPL/Coverland/2013

Our ref: JLL/P.2382

Date: 3rd September 2013

By email

Dear Mr Heaton,

**Longstone Edge East
 Review of Old Mineral Permission and Potential Prohibition Order**

Further to my previous acknowledgement of your letter dated 11th June 2013, and my email last week, I apologise again for the delay in sending a response. The issues in this case, of whether or not the Authority considers whether winning and working has permanently ceased and therefore whether or not the Authority has a duty to make a prohibition order, are complex and we have had to take more time to consider them with Counsel. Whatever decisions the Authority comes to on these issues, there is a possibility of subsequent legal proceedings. Therefore, I have had to ensure that the Authority has the best possible advice.

I am now intent on taking a report to the Authority's Planning Committee on Friday 11th October. I will include in that report details of the correspondence with and on behalf of Coverland Ltd.

The Authority has to bring to a conclusion its consideration of this case under Regulation 26B of The Town and Country Planning (Environmental Impact Assessment) Regulations 1999 as amended by the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008.

The 2008 Regulations were enacted by Government to require updated information to be submitted in respect of stalled ROMPs. In respect of the mineral permission at Longstone Edge East the National Park Authority gave a deadline of 31st October 2010 for the necessary environmental and other information required. The information was not provided and the minerals permissions went into automatic suspension on 1 November 2010. If after a period of 2 years in automatic suspension the relevant information required by the Regulations has not been provided, the Authority has to consider whether the winning and working of minerals has permanently ceased and it has a duty to make an order prohibiting the resumption of mineral development.

Our resolution of this matter was delayed by the difficulties we identified with the Regulations and the need to clarify those with Government. The Government's response effectively left it with the Authority to determine whether or not it has a duty. I will now be putting our considerations and our Counsel's legal advice on this matter to Planning Committee.

At our meeting on 10th May we discussed Coverland's proposals for future restoration and use of Backdale and Wagers Flat. My letter of the same date had addressed some of those matters

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Chief Executive: Jim Dixon

Chair: Tony Favell MBE Deputy Chair: Geoff Nickolds

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and also considered the minerals issues. At the meeting I advised that, in our without prejudice view, the minerals issues and Coverland's non-minerals proposals should be considered independently.

With respect to Coverland's non-minerals proposals, in your letter dated 11th June you linked these to the minerals issues by stating that Coverland remains of the view that the Authority should not make a prohibition order at this time whilst Coverland submits its proposals.

Although I understand this view, and the reasons you gave in your letter, I explained at the meeting that if our consideration of evidence concludes that winning and working had permanently ceased and the Authority had a duty to make a prohibition order, then our legal advice is that we would be obliged to do so.

It was on that basis that I encouraged Coverland to pursue non-minerals proposals as a separate entity from the minerals issues, with the merits of the proposals put forward for the Authority to consider.

At the Planning Committee meeting I will report our consideration of the evidence about whether winning and working has permanently ceased and committee will be asked to make a decision on the evidence available. Because of the possibility of consequent legal proceedings the report may be confidential. I will advise you again on this matter.

With respect to restoration of the worked areas, there are several ways this can be progressed. If the Authority was to make a prohibition order it would need to include a restoration scheme. Alternatively, the restoration of the site could be secured either through a scheme which formed part of a ROMP submission, or, through a scheme that was related to an alternative planning proposal.

There are some other points in your letter of 11th June that I wish to comment on at this stage.

At the meeting we discussed the removal of stone from Wagers Flat. Subsequent to the meeting I was advised that Peter Hunt is seeking funding to be used in part to re-instate dry-stone walls. For grant purposes, the stone used must be from a source which has the benefit of planning permission. The recovery and use of the stockpiles of stone cannot lawfully take place at Wagers Flat since the planning permission is in suspension. The permission is for fluorspar, barytes and lead and any other minerals won in the course of working. Based on the court of appeal legal interpretation of the permission, the removal of limestone would be unlawful even if the permission were not suspended. We acknowledge, however, that there are advantages to limestone overburden being removed from Wagers Flat for walling on the holding. In particular it is a sustainable option in terms of proximity to the walling, and it would increase the amount of walling that could be realised with the finance available. Peter was therefore advised by Rebekah to submit an application to apply for permission to remove 1,000 tonnes of limestone overburden from Wagers Flat for the stone walling.

Other works discussed such as removal of berms (bunds), amendments to/removal of buildings, use of on-site limestone aggregate within the 1952 permission area, would need to be the subject of an approved restoration scheme.

One other aspect that I need to advise on at this stage is the possible implications of geological instability for Coverland's proposals in Backdale. We have taken specialist advice on the stability and safety issues. Based on that advice, use of the area within the upper quarry is not viable because of the risk of the quarry face collapsing.

I suggest that it would be useful for us to arrange a further meeting to discuss Coverland's intention to submit an alternative proposal. If your client agrees with this please suggest suitable dates. Prior to a further meeting it would be useful if Coverland could provide some more details of the proposals, possibly with plans.

Please also let me know if further discussion is required at present on the other content of this letter.

Yours sincerely

John Lomas
Director of Land Use Policy

It therefore appears to us that the MPA is simply at the same point it was in back in September 2012 - when Coverland wrote to you - considering whether it is now expedient and in the public interest to make a Prohibition Order. In this regard the suggestions we put to you in our letter remain broadly relevant - see attached letter. A key point being a request for the Authority not to make a Prohibition Order whilst Coverland bring forward proposals that would help secure the reclamation, restoration and end-uses for those elements of the LE permission that are your main focus.

We can only surmise, based on the current circumstances and the correspondence exchange with the Treasury Solicitor, that the likely view of the MPA is that wining and working has permanently ceased in the LE permission and that the MPA is now focussed on reclamation, restoration and end-uses particularly for the Backdale and Wagers Flat areas.

Assuming this is the case we still remain firmly of the view that, in the light of the proposals tabled by Coverland at our meeting - involving their own proposals for reclamation, restoration and end-uses of Backdale and Wagers Flat - it is sensible and in the public interest not to make a Prohibition Order at this point in time whilst Coverland submit these proposals to you.

In short, we cannot see the point of expending public money on preparing an Order (with the cost of professional and technical input) when Coverland continue to pursue a practical and deliverable approach to reclamation of these areas. Rather than spending public funds and pursuing legal/formal channels, which will then potentially result in time and costs for Coverland, there is in our view real merit in allowing Coverland the opportunity to present you and your members with some practical and beneficial proposals which will include the recovery and use of certain valuable materials on site, as well as taking into account established uses (i.e. ongoing business use) that help facilitate delivery.

In this regard we would highlight proposals to restore Wager Flat, which include:

- Recovering valuable walling stone from old overburden for use on the estate (which generally appears to fall under the auspices and spirit of agricultural permitted development rights - GPDO, Part 6, Class C)
- Removal of old haul road berms that detract from the local landscape
- Use of overburden and material from the berms to infill the old void at Wagers Flat
- Seeding, planting and fencing of the site
- Recovery and use/export of currently stockpiled processed stone (aggregate) - to help offset the costs of the engineering and restoration works and to ensure that readily available valuable construction materials are not wasted (further to our meeting Coverland has assessed the stockpiles and estimates they contain approximately 15-20,000 tonnes of usable processed stone)

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The indicative timescale for these works is around 2-3 months.

Proposals to rationalise uses and restore/reclaim areas at Backdale Quarry, including:

- Clarification of established use within existing buildings
- Bring forward replacement buildings and improve the visual appearance of the site
- Use of on-site material to buttress and batter against the old quarry faces – to improve safety and integrity of the faces
- Seeding/planting

We did mention the impending submission of an application for a certificate of lawful development/use, based on the continuing use of the building at Backdale Quarry. In general terms you seemed to accept the basis and history behind this submission, which is reflected in the bullet points above.

We must stress our view that joint working, co-operation and local engagement are a far better means of securing practical solutions in relatively short timescales rather than the instigation of formal proceedings, which are time consuming, costly and divert all parties away from securing the best land-use outcomes.

We would be grateful if you could bring these comments and proposals to the attention of your Planning Committee and would welcome any help you can give in ensuring some weight is attached to these considerations when considering the question of making a Prohibition Order.

Yours sincerely,

Simon Heaton
Heaton Planning

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Mr Peter Hunt
 Coverland UK Ltd
 Mansfield Road
 Bramley Vale
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 S44 5GA

Your ref:
 Our ref: P.2382
 Date: 10 May 2013

Dear Mr Hunt

Proposed Cycle Hub - Backdale Quarry

I am writing further to the meeting on 13th March 2013 where your draft proposals for the redevelopment of Backdale Quarry were discussed with Jim Dixon, David Bent, Carol Parsons and Sarah Foster. Since that meeting officers have considered the proposals in more detail and would like to make the following without prejudice comments in response to the concepts informally submitted to us at this stage.

Proposed Development

The draft proposals we have seen consist of the following elements, in summary.

- A mountain biking 'hub' with associated indoor activity centre/café
- Mountain bike trails
- A building housing an indoor bike centre
- A building housing an indoor activity centre/additional indoor bike centre
- A future building providing 1,350sqm expansion space
- Approximately 302 parking spaces
- A zip line
- Restoration of Wagers Flat and Backdale

Minerals Issues

The Authority expects to see the restoration of Backdale Quarry and Wagers Flat. We have previously given advice on alternative development proposals for the site in a letter dated 20th February 2012, the principles of which still apply. Since that time the 1952 planning permission has gone beyond the 2 year suspension period and that has implications on how redevelopment proposals are viewed against policy.

The site has had a long and complex planning history and achieving a satisfactory planning resolution to mineral extraction across the whole of the Longstone Edge East area would present the opportunity for environmental enhancement.

In principle therefore the Authority would welcome proposals to regrade/landscape and restore the Backdale quarry in particular, although it is noted that the existing topography and nature of the quarry faces impose a number of restoration limitations. Achieving restoration of Wagers Flat is also an important objective.

Policy MIN1 of the Peak District Core Strategy would support in principle a planning application necessary to achieve the restoration of these quarries. Restoration would also represent an enhancement of the National Park in line with Policy GSP2 of the Core Strategy.

Generally under planning permissions for minerals sites, when mineral extraction ceases all buildings and plant need to be removed. New built development on former mineral sites is not generally supported. Therefore, the Authority would need to ensure that if it were to support your proposal in the form put forward or any revised form, it was for exceptional circumstances that did not establish a precedent for other mineral sites within the National Park, including other controversial mineral sites.

It appears, from your proposals and the discussions, that for the restoration of Wagers Flat you suggest moving some 53,000 cubic metres of material from Backdale and use some 10,000 cubic metres of material already in Wagers Flat. You further propose for the restoration of Backdale to move some 20,000 cubic metres of material from Wagers Flat and use existing material in Backdale which you estimate as approximately 310,000 and 219,000 cubic metres.

As you are aware the Longstone Edge East site as a whole is in 'automatic suspension'. This covers both the Wagers Flat and Backdale areas. As a consequence, no further mineral extraction can be undertaken on site nor can any material be removed from the Longstone Edge East planning permission area. Theoretically therefore, material could be taken from Backdale to Wagers Flat (or vice versa) for utilisation in restoration. However, any moved material could not be used as part of construction activity, its only permitted use would be as an integral part of restoration works.

You do not illustrate the proposed restoration profile for Wagers Flat, therefore we are unable to indicate whether or not the proposed restoration scheme would be acceptable or not. In principle the Authority would be willing to see either Wagers Flat restored to the level of the surrounding land or be restored to a profile containing a central hollow depression as you suggested in your previous scheme put forward in January 2012.

The Authority would have concerns relating to the number of vehicle movements that the combined 73,000 cubic metres of material being moved would generate between Wagers Flat and Backdale. We would prefer to see the relevant material retained within each site for utilisation in restoration. You would therefore need to clearly articulate why it is considered necessary in particular to move the material from Wagers Flat and 'replace' it with material from Backdale. The Authority also has some concern relating to the practicality of using the unclassified County road due to the gradients, alignment and scale of the road.

The proposed restoration profile for Backdale is only set out in a broad illustrative manner and as such it is difficult to give any specific comments. In principle however the Authority would be likely to support some benching works and would encourage the placing of existing material against the lower quarry face. The Authority would be concerned about the stability of the quarry face with regard to any proposals to encourage public access to the quarry face/benches and the placing of development below the face/benches.

As you are aware the Authority still has to consider whether or not to make a Prohibition Order for the Longstone Edge East permission. In the coming weeks a report to Planning Committee will ask Members to reach a conclusion on this issue. If a Prohibition Order were to be served it would need to be accompanied by a restoration scheme, which would involve re-profiling of Wagers Flat and Backdale but purely utilising material already in each respective site.

Principle of Redevelopment

On the assumption that the above minerals issues can be overcome, the first point to establish is what support exists in adopted policy for the kind of development being proposed.

At the highest level, the National Park's two statutory purposes are to:

- Conserve and enhance the natural beauty, wildlife and cultural heritage
- Promote opportunities for the understanding and enjoyment of the special qualities of National Parks by the Public

When National Parks carry out these purposes they also have the duty to:

- Seek to foster the economic and social wellbeing of local communities within the National Parks

In light of this, particularly with reference to the second purpose and the duty, the Peak District National Park Management Plan supports various tourist related activities within the National Park's boundary under policies W11, W12 and W14. The promotion of leisure cycling is a particular aim, as is encouraging sectors of society currently under-represented in visitor statistics. Policy ES2 of the Management Plan promotes economic diversity in the National Park.

In this respect, there would be some strategic level support for a cycling hub within the National Park, subject to compliance with detailed planning policies and the overarching principle that conservation and enhancement of the landscape ultimately takes priority. Some of these policy considerations have already been outlined in the letter to you dated 20 February 2012.

Policy GSP1 of the Core Strategy seeks to ensure that all development looks to achieve the conservation and enhancement of the National Park. The scale of the leisure use proposed is likely to result in the proposals being classified as 'major development' under the definition in the Development Management Procedure Order by virtue of the site area and/or floorspace created. Policy GSP1 indicates that major development should not take place within the National Park other than in exceptional circumstances and that major development will only be permitted following rigorous consideration of the criteria in the National Planning Policy Framework.

Policy GSP1 does also go on to indicate that: *"Where a proposal for major development can demonstrate a significant net benefit to the National Park, every effort to mitigate potential localised harm and compensate for any residual harm to the area's valued characteristics would be expected to be secured."*

Other relevant policies within the Core Strategy include, but are not necessarily limited to, those relating to landscape protection and enhancement (L1) as well as specific recreation and tourism policies. RT1 is particularly relevant to these proposals and any future application would need to show how its provisions have been considered. At the meeting on 13th March officers outlined the kind of evidence we would need to see to justify why such a facility needs to be located in open countryside in the National Park (RT1B) e.g. existing provision of such facilities elsewhere in the country, levels of demand, types of users, and benefits of the physical location of Backdale over and above any other generic location.

In assessing the proposals against these policies at this draft stage, there are elements which appear to be more closely related to the National Park's Management Plan aims and statutory

purposes than others. It would, for example, be more difficult in policy terms to justify why a zip wire or an indoor skate park require a National Park location. These more generic, unrelated elements of the proposals should be reconsidered and either scaled back or removed entirely, leaving the focus on those elements such as mountain biking, which would clearly benefit from the proposed location and are more closely aligned with our policies and strategic aims as an Authority.

Depending upon its final, constituent parts, the proposal may constitute a departure from the development plan and would need to be advertised and considered as such. You have not asked us to consider a screening opinion for environmental assessment; however it is likely that the Authority would require an environmental statement for a development of the scale and type indicated in the outline proposal given its likely regional significance and potential impact upon its wider setting.

Design issues

A clear and holistic masterplan approach for the site would be of benefit to all those who would have an interest in the site's redevelopment. This could indicate how the development of the site would be phased. As currently shown, the Authority is unlikely to grant approval for 'expansion space'. We would need to fully understand what this may be used for, the impact of it or whether the likely demand of earlier stages of the development is likely to be so high that expansion space is required (particularly if the 'non-essential' elements of the scheme are stripped out).

As the proposals are in a sensitive location, a coherent and high quality design approach to individual buildings and to car parking and landscaping would be expected. Generic, industrial style sheds would not be acceptable.

Access

Although the proposals appear to utilise an existing access point, the Highways Authority (Derbyshire County Council) would need to be consulted at an early stage as the use of the access will be intensified significantly.

Access to the site by more sustainable means should also be considered, to align the scheme with National Park policies. 302 car parking spaces is significant provision and, regardless of the design implications of that level of parking, in sustainability terms such a high level of parking in this location in a National Park would need to be fully justified.

Potential Conflicts With Other Activities

At the meeting we raised the issue of intensifying the use of existing trails in the area by one particular sector of users i.e. cyclists. As a result of such increased use, potential conflicts with other users could arise on bridleways and roads in the locality. The management of that would need to be assessed and strategies clearly outlined to deal with it.

Pre-application Consultation

There is likely to be a great deal of local interest in this scheme and we would encourage you to carry out early consultation with the public and with statutory consultees at a stage where it can make significant differences to your final proposals.

Conclusions

There remain significant minerals and general policy issues and concerns to be resolved before the development proposals can be meaningfully progressed. Overall, a final proposed scheme would need to balance the benefit of the restoration of Backdale quarry against the impacts likely to arise from the proposed new leisure development, and the Authority would ultimately need to determine whether the proposals provide a sufficient net benefit to the National Park overall to outweigh any potential adverse impacts or departure from policy.

As with previous draft schemes for the site, certain aspects of the current proposal have merit and are worthy of being explored further and, in addition to adopted planning policy, there are other material planning considerations to take into account in this case e.g. the aims of the Authority to promote cycling and to ensure the National Park attracts a more diverse sector of the population to visit the area.

We look forward to further consideration with you of the advice in this letter.

Yours sincerely

John Lomas
Director of Land Use Policy



Litigation Group

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25 March 2013

Dear Mr Lomas

Stalled Reviews of Old Mineral Permissions and Prohibition Orders

Thank you very much for your letter dated 11 March 2013 and the extension of time you have agreed for us to provide a response.

We are grateful that you have clarified your position. As modified by regulation 26B of the 2008 Regulations, paragraph 3 of Schedule 9 to the TCPA 1990 states that:

[(1) Where it appears to the mineral planning authority—

(a) that development of land—

- (i) consisting of the winning and working of minerals; or
- (ii) involving the depositing of mineral waste, has occurred; but

(b) the winning and working or depositing has permanently ceased, the mineral planning authority-

- (i) must by order prohibit the resumption of the winning and working or the depositing; and
- (ii) may in the order impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).

(2) The mineral planning authority may assume that the winning and working or the depositing has permanently ceased only when—

(a) no winning and working or depositing [for which permission is not suspended by virtue of regulation 26A(18)] has occurred, to any substantial extent, at the site for a period of at least two years; and

(b) it appears to the mineral planning authority, on the evidence available to them at the time when they make the order, that resumption of the winning and working or the depositing [for which permission is not suspended by virtue of regulation 26A(18)] to any substantial extent at the site is unlikely.

Lee John-Charles – Head of Division
Neera Gajjar – Deputy Director, Team Leader
Litigation B5



Having considered the matter as it is now put, we agree with your reading of paragraph 3(1)(b) of Schedule 9, namely that it must appear to a MPA that winning, working or depositing have permanently ceased before it is under a duty to make a prohibition order.

However, in our view there are unlikely to be many cases in which, after 2 years' suspension an MPA would be acting rationally in not finding or assuming that working had permanently ceased. For this reason, we consider that any perceived disparity between the 2008 Guidance ("Environmental Impact Assessment and Reviews of Mineral Planning Permissions") and the 2008 Regulations would be minimal.

More importantly though, as is very well-known, guidance cannot change the law nor can it offer an authoritative interpretation. It is for MPAs to interpret the law and act in accordance with that interpretation. As such it is for you, having taken Counsel's advice, to act in accordance with the law as you see it. As set out above, your interpretation is one shared by the Department.

Nonetheless, the Department wants its guidance to be as clear and helpful as possible, and we are grateful to you for bringing this matter to our attention. You may be aware that it was confirmed in the 2013 Budget that "the Government will publish significantly reduced planning guidance by this summer, in line with Lord Matthew Taylor's recommendations, providing much needed simplicity and clarity". We consider that the 2008 Guidance falls within a scope of the review of planning guidance being led by Lord Taylor. We will therefore take the opportunity as part of this process of reconsidering the guidance and making any amendments needed to clarify the points you have raised.

Finally, and most importantly of all given the present context of pre-action correspondence, we would reiterate our position set out in paragraph 7 of our letter dated 28 February 2013 which your response of 11 March 2013 did not address, namely that in our view there is nothing in this case that would justify the exceptional course of seeking an advisory declaration. This is all the more so given what is said above.

Yours sincerely

Alexandra Lewenstein
For the Treasury Solicitor



Litigation Group

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28 February 2013

Dear Mr Lomas

Stalled Reviews of Old Mineral Permissions and Prohibition Orders

1. We represent the Secretary of State for Communities and Local Government in the matter raised in your letter of 15 February 2013 and draft Statement of Facts and Grounds (SFG). This has, as you requested, been treated as formal pre-action letter and this response is intended in the same way. I am using numbered paragraphs in this letter for convenience.
2. In summary, the Secretary of State's position is that the view initially taken by your legal and minerals officers, as described in paragraph 3 of your letter, is correct. We understand the alternative being put forward to be that in paragraph 5 of your letter, namely that the regulations have the effect that "the duty to make a prohibition order arises only if the MPA has concluded that mineral operations have permanently ceased other than as a result of the suspension".
3. Unfortunately neither we nor Counsel from whom advice has been taken, properly understand the argument in support of that alternative interpretation. In particular, paragraph 17 of the draft SFG is extremely difficult to follow (not least because reference is made to the "fundamental precondition" without that being defined) and further the proposed declaration does not appear to clarify anything one way or the other.
4. As far as it is possible to tell the argument seems to be based upon the wording in regulation 26B(5). It appears to be suggested that paragraph 3(2)(a) of Sch 9 (read with reg 26B(5)) requires that the permission is not suspended and therefore cannot apply in a situation where the permission is suspended.
5. The immediate response to this is that such a construction of the regulations would be absurd and render them meaningless given that the whole point of them was to deal with

Lee John-Charles – Head of Division
Neera Gajjar – Deputy Director, Team Leader
Litigation B5



the situation where operations have been suspended for two years, and in that situation to convert the discretion to make a prohibition order into a duty.

6. In any event, it is our view that the wording and effect of the regulations is clear and is as described in the relevant guidance and as understood by your legal and minerals officers. The words in regulation 26B(5) have the effect described in paragraph 16 of the draft SFG, i.e. to ensure any winning, working or depositing which has taken place during the suspension (and therefore unlawfully) does not prevent a prohibition order from being made. Where no winning, working or depositing has taken place, the additional words added by regulation 26B(5) simply do not apply because there is nothing for them to bite on: nothing has happened so there has been no operation "for which" permission exists or does not exist. That interpretation is not only sensible as a matter of construction, but achieves the purpose of the regulations and is consistent with the guidance.
7. We would further respond on the issue of the appropriateness of your proposed course of action, namely an application for an advisory declaration. Case law makes clear that the court will only exercise its power to make such declarations sparingly and in exceptional circumstances: see *R (CND) v Prime Minister* [2002] EWHC 2777 (Admin) at 15, 46, 47 and 52. In our view this is not such a case: the regulations are clear and consistent with the relevant guidance and whilst your authority is entitled to take a different view, that is a matter for you. We note what your letter says about the risk of legal challenge but that involves speculation and in any event is the case with any decision taken by a public body.
8. If, following consideration of this response, you still intend to pursue the matter we would invite you to send a further letter before action and/or amended draft SFG setting out your argument and proposed declaration with more clarity and also dealing with the points made above. This will enable further and better consideration to be given to these issues before proceedings are commenced.

Yours sincerely

Alexandra Lewenstein
For the Treasury Solicitor

Bent David

From: Lomas John
Sent: 30 October 2012 12:30
To: Bent David
Subject: FW: Longstone Edge East - Coverland UK Ltd. H110B
Attachments: Drawing Number CL206312.002B 2012 10 30.pdf

As discussed

From: John Church [mailto:]
Sent: 30 October 2012 10:51
To: Lomas John
Subject: Longstone Edge East - Coverland UK Ltd. H110B

H110B

John:

Thank you for your E-Mail sent on 26 October 2012. I note its contents and I look forward to receiving your further advice. In the meantime, we are now making significant progress with regard to the development of proposals to the extent that we feel that a further meeting with you would now be justified. It might, at this stage, be one that could also be the subject of a brief walk around to look at the areas in question. It is suggested that such discussions could concentrate on five main issues:

1. The closure of the quarry and reinstatement of exposed faces at Backdale Quarry followed by its layout as an employment site. I am pleased to attach a copy of drawing number CL.206312.002B, prepared by Oasis Urban Design & Architecture Ltd, showing how the site might be laid out. It is considered that there is a clearly-identified need to provide employment opportunities in this manner where there can be a mix of new buildings, fit for individual purposes, and also outside storage and display areas. We hope to be able to identify the type of potential end user when we meet, in support of a belief that considerably in excess of 100 long-term jobs may be created.

2. Wagers Flat. A strategy for the removal of stockpiled material remains to be agreed. Clearly, the above development will necessitate re-profiling of the existing quarry floor to render it suitable to be laid out in the manner envisaged. This will involve the removal from the quarry of a significant amount of material that is not suitable from a load-bearing point of view. It is considered that material stockpiled at Wagers Flat could be transported to Backdale Quarry and that the material at the quarry, comprising mainly compacted fines, could be used for the infilling of the excavation at Wagers Flat.

3. The above development would necessitate the upgrading of a haul road between the respective working areas. This, it is intended, would be short-term in its usage after which the line of the haul road would be restored in an environmentally sensitive manner to a specification to be agreed with the Authority and the Derbyshire County Council.

4. We have already commenced discussions on the finding of a mutually acceptable problem to the permanent diversion of public footpaths affected by the quarrying operations at Backdale Quarry. A site meeting with Officers of the County Council has already taken place and these discussions will be continued with a view to an efficient solution being identified.

5. Since the last meeting, Coverland UK Ltd has acquired further land adjoining Longstone East. This area comprises part of an SSSI in respect of which Coverland UK Ltd has already been in discussion with your colleague, Rebecca Newman. It is considered that the time is appropriate to discuss a project which, amongst other things, would see the restoration of traditional limestone walls in the SSSI and also the setting to the nearby Ancient Monument, the potential for which has recently been discussed with both Rebecca and a representative of English Heritage.

Pending a decision arising from the meeting on 16 November 2012, I shall be most grateful if you will let me know whether you are amenable to the suggested meeting and, if so, whether you would agree that a walkover of the area, perhaps taking no more than an hour and involving Jim Dixon, might be advantageous to all parties. I look forward to hearing from you accordingly.

With regards.

John Church
Att

John Church Planning Consultancy Limited
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117 High Street
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Tel:
Fax
E-mail:

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John Church Planning Consultancy Ltd
 Victoria Buildings, 117 High Street
 Clay Cross
 Chesterfield
 S45 9DZ

Your ref: JC/LB/H110

Our ref: ABN/vi2382

Date: 26th October 2012

By email:

My email:

john.lomas@peakdistrict.gov.uk

Dear John

LONGSTONE EDGE EAST – COVERLAND UK LTD

I refer to your letter dated 5th September 2012 (received 19th September 2012) regarding Longstone Edge East addressed to Jim Dixon, which he passed to me for a response. I regret the delay in replying – it was essential that I discussed the contents of the letter with my colleagues in the legal and minerals teams before doing so.

As you acknowledge, the Longstone Edge East area has a complex planning history. Earlier this year, minerals officers met with you and discussed your client's proposals for a potential option for seeing the resolution of mineral extraction in this sensitive area. They explained at that meeting the process for the review of the old mineral permission (ROMP).

As recognised in your letter, the Authority has to consider the issue of the serving of a Prohibition Order after the site has been in automatic suspension for two years, and this two year period ends on 31st October 2012. We note that you do not see any immediate benefit in attempting to de-stall the ROMP, but also recognise that you do not see a Prohibition Order as being the most appropriate way forward. Your proposed timescale for moving forward potential development scenarios for Backdale, Wagers Flat and Calver Park is duly noted, including the request for the deferral of potential Prohibition proceedings until at least 31st October 2013, i.e. a year.

This has raised matters which we need to consider carefully, and I have sought further legal advice on the Prohibition Order requirements and procedures. I now need to report on those, together with your request to delay consideration of the pursuance of a Prohibition Order, to Planning Committee. I expect to be able to do that to the meeting on 16th November 2012. Please note that the report will be a confidential item because it will need to consider the legal advice I receive. However, I will ensure that your letter dated 5th September is included in its entirety with the report.

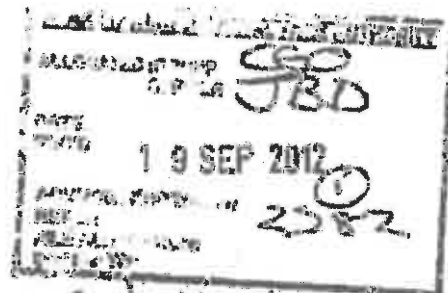
Yours sincerely

John Lomas
 Director of Land Use Policy



COVERLAND

My Ref: JC/LB/H110
Date: 5 September 2012



Mr J Dixon
Chief Executive
Peak District National Park Authority
Aldern House
Baslow Road
Bakewell
Derbyshire
DE45 1AE

Dear Mr Dixon

Longstone Edge East – Coverland UK Ltd

Further to the meeting that took place earlier this year concerning the above land, we are writing on behalf of our client, Coverland UK Ltd, to outline the latest position and thinking and to seek agreement of the National Park Authority to an initial way forward.

We are well aware that the Longstone Edge East mineral planning permission and past mineral workings present a complex planning background, which now requires a proactive approach by all parties to find deliverable planning solutions in order to secure the most sustainable future uses of the land.

In this regard, we deal below with the following matters:

- Land and Mineral Interests.
- The Minerals Permission and the Minerals Review (ROMP).
- Potential Development Proposals.
- Rights of Way Matters.
- Community Engagement.
- Joint Working and Progress Reports.
- Request for an Agreement on the Way Forward.

Land and Mineral Interests

Our client, Coverland UK Ltd, has gained control of the interests of Bleaklow Industries Ltd and, as a consequence, now owns significant areas of land, as shown on the enclosed drawing. The Company also has mineral rights covering various areas of land. These are described on the accompanying extract from the Land Registry entry.

Having now acquired these land and mineral interests, Coverland UK Ltd is giving consideration to all their options concerning:

The potential for future recovery of fluorspar and related fluorspar supply considerations;

The need for reclamation/restoration of land;

The potential for delivering development that can remediate and appropriately landscaped disturbed areas;

Delivering solutions and benefits in respect of rights of way issues and access to the countryside;

Establishing new uses that can bring overall benefits (economic, social and environmental) to the Peak District National Park.

In terms of mineral working, Coverland UK Ltd is aware of the planning history and the outcome of the legal actions and the implications that this has for any future mineral recovery. The Company is also now in dialogue with the new owners of Glebe Mines in order to establish their intentions in terms of potential mineral recovery from the area to which the Longstone Edge East planning permission relates. As you will be aware, Coverland UK Ltd has a variety of mineral interests, including quarrying and mining operations, and it is considered important that we consider, as part of the work on the site options, any potential benefits of recovering minerals from the site.

In summary, potential options are currently being considered and Coverland UK Ltd needs to work with the other owners and, particularly, the Peak District National Park Authority to establish the best and most sustainable options for this land.

The Minerals Permission and the Minerals Review (ROMP)

We are aware that the Minerals Review (ROMP) of the Longstone Edge East mineral site is stalled and that to progress it would require the submission of a substantive body of information and evidence. Although the stalling of the ROMP has led to the mineral site going into automatic suspension, it is apparent that there is still a valid planning permission for mineral extraction and that the Court actions have established the nature of any future working.

We acknowledge that the Mineral Planning Authority is required to consider the potential for prohibiting further mineral working after two years of the site remaining in automatic suspension, ie after 31 October 2012. This is not straightforward though, as regard must be had to the following:

- Where the mineral operations have permanently ceased and whether there are intentions for further workings of the site?
- That various parties have land and mineral interests and the Longstone Edge East planning permission covers a large area, geographically and geologically.
- The potential to achieve effective and deliverable restoration through the making of an order.

Having regard to the comments above, we do not see any immediate benefit in Coverland UK Ltd attempting to de-stall the ROMP. At the same time, we cannot discount 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.

We will expand on these points a little later in the letter.

Potential Development Proposals

Whilst mineral recovery has to be considered, you are aware from the previous meeting and subsequent correspondence that we are working on a series of linked development proposals that could deliver sustainable future development. Such development proposals could present better alternatives to mineral working and could remediate areas of past mineral working and deliver restoration and landscape enhancement.

In order to deliver future land uses, as well as remediation/restoration, it may be necessary to carry out operational phases of development and civil engineering operations. This would include internal haulage/movement and placement of excavated materials, the recovery and use of any usable materials, and the re-grading and engineering of previously disturbed sites.

A very brief summary of these proposals is as follows:

Backdale Quarry

We confirm that the intention here is to permanently close the Quarry, create level platforms within a secured quarry area and to develop the site for employment use. This possibility was raised at the meeting earlier this year and you have provided comments.

Wagers Flat

We understand that the Authority requires restoration of the excavation and the removal of the stockpile of excavated material close to it. Recognising also that the Authority is not minded to accept the removal of the stockpiled material off-site, we will, nevertheless, be pleased to talk about the principle of a proposal that would utilise this material in the

restoration of Backdale whilst disposing of material removed from Backdale into the excavation. Clearly this is a simplification of a detailed proposal that we would put to you but the principle remains to be considered from our point of view.

Calver Park (Red Rake Mine)

We previously put to you a proposal that would see this site developed, highly sympathetically, by means of a series of holiday lodges and we left a copy of a drawing, prepared by Oasis Urban Design & Architecture, for your attention. Whilst brief comments have been received with regard to the development of this site no detailed further discussions have taken place.

Necessarily, development of the above proposals will take a period of time but consultations have already been commenced with the Derbyshire County Council from a highways point of view. We feel that it will be helpful to have ongoing discussions with the Authority's representatives on site to discuss each of these developments. At this stage, our objective is to have proposals prepared to submission stage within approximately six months before which we will, of course, liaise with you in respect of the detailed content of any necessary assessments and also the requirement for an Environmental Impact Assessment.

Rights of Way Matters

As a consequence of recent dialogue with the Authority, we are aware of a number of rights of way considerations and E-Mails have recently been exchanged with Richard Pett on this matter. We are pleased to confirm that we see a mutually advantageous way forward here in the suggestions made by Mr Pett and by the Derbyshire County Council. On the further matter of other rights of way in the area, there are intentions to carry out improvements and to provide a better standard and condition for them. These are important issues for Coverland UK Ltd, as new landowner, and we therefore wish to stress that it is our intention to deal with the resolution of existing problems as well as future improvements to the rights of way network as soon as possible. Current thinking is that potentially the best vehicle for bringing forward these solutions/improvements would be through the linked development proposals referred to very briefly above. A resolution and rights of way obstructions and diversions, as well as potential future improvements, could then be dealt with through the provisions of the Town & Country Planning Act 1990, subsequent to the determination of planning applications, rather than through legislation contained within the Highways Act.

Community Engagement

We are conscious of both the past interest and concern of the local community concerning Longstone Edge East as well as the general requirement to engage and work with the community in bringing forward future development proposals. In this regard, we can confirm that we have established contact with and met representatives of both the Save Longstone

Edge Group and the Friends of the Peak District. We have undertaken to continue this liaison and to involve these and other organisations in discussing the practicalities of delivering potential development solutions. We have not, at this stage, met with any of the Parish Councils but this, we hope, can be something that is addressed within the next few weeks.

Joint Working and Progress Reports

In a similar fashion, we intend to work closely with Officers and Members of the Peak District National Park Authority to secure sustainable future uses and a practicably deliverable way forward for the Longstone Edge East area. Besides the obvious ongoing dialogues and specific pre-application discussions with Officers, we believe that there will be merit in having regular progress reports to the Planning Committee to keep it updated on the work that is taking place and the potential outcomes that it is hoped can be achieved. We consider that this will, in combination with our community consultation, help to keep all interested parties engaged and involved in the planning for this site/area. Feedback from the Authority's Planning Committee arising from the progress reports will be very helpful to our Team, particularly in view of the sensitive nature of the site and the considerable planning history.

Agreement on the Way Forward

We hope that you will agree that the thinking and approach that has been outlined presents a good opportunity to make some positive steps towards resolving many of the main issues faced at Longstone Edge East and to deliver sustainable development in the future. We believe that the approach is reflective of the requirements of the National Planning Policy Framework (NPPF), as it involves a proactive approach to finding deliverable planning solutions.

We consider that every effort should be made, on all sides, to avoid a descent into litigation and court action. This is, nevertheless, a very complex site and all parties are faced with challenging issues. Notwithstanding these considerations, there is the potential to achieve a net benefit to the Peak District National Park, notwithstanding that this may involve some operations and a continuation of localised short-term disturbance in order to achieve the best possible long-term outcome. As a first step, we wish to broker an agreement with the Authority, along the following lines:

To allow Coverland UK Ltd, through its advisers, to carry out a detailed professional assessment of all development/delivery options, as part of an overall intent to bring forward, as rapidly as possible, a series of linked proposals. During such a period, the Peak District National Park Authority would agree that it will not embark upon any formal proceedings, immediately after 31 October 2012, concerning the prohibition of future mineral workings within the Longstone Edge East planning permission.

In terms of timescale, it would be beneficial if the deferral of any potential proceedings could run to at least 31 October 2013. Our thinking here is that assessment work, regular engagement and submissions will take place generally in accordance with the following indicative timetable:

- Late summer/autumn 2012 – Community Engagement, assessment of all development options, technical/professional assessment work and design work and liaison with regard to potential EIA Screening and Scoping.
- Winter 2012 – Further Community Engagement and refinement of proposals.
- Early 2013 – Submission of proposals.
- Spring 2012 – Determination of potential planning applications.
- Summer 2013 – Completion of agreements and issuing of decisions.

We suggest that progress reports be presented to the Authority's Planning Committee on a quarterly basis, perhaps starting with this request for an agreement being presented to the Committee at the first available opportunity. We shall, of course, be pleased to discuss any matters arising from the undertakings that we have set out in this letter because the Authority's reactions are important to the Company and we will be grateful if you will reply initially to the Clay Cross address below.

Yours sincerely

 John Church

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