

CO/6149/2004

Neutral Citation Number: [2006] EWHC 3387 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
THE ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2

Wednesday, 29th November 2006

BEFORE:

MR JUSTICE SULLIVAN

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THE QUEEN ON THE APPLICATION OF

BLEAKLOW INDUSTRIES LIMITED

(CLAIMANT)

-v-

(1) PEAK DISTRICT NATIONAL PARK AUTHORITY

(2) GLEBE MINES LIMITED

(DEFENDANTS)

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(Official Shorthand Writers to the Court)

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MARTIN KINGSTON QC and TIMOTHY JONES (instructed by Messrs Bremners,  
Liverpool), and on this occasion MISS M GREKOS, appeared on behalf of the CLAIMANT  
FRANCES PATTERSON QC and ALAN EVANS, and on this occasion MISS S REID,  
appeared on behalf of the DEFENDANT

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J U D G M E N T  
(As approved by the Court)

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58. In these proceedings the court must resist the temptation to construe the 1952 permission. But even if it is assumed that the claimant's interpretation is correct, it is difficult to see how there could be "genuine working" of the specified minerals enabling limestone to be extracted as part of the same operation in the land subject to the section 106 agreement at the eastern end of Longstone Edge if there are no significant vein mineral reserves in that land. Putting the matter more simply: if the defendants were correct in their view that there were no significant vein mineral reserves in the section 106 land, what benefit was being conferred by the agreement? Was an obligation to give up a right to vein mineral reserves which were not significant in one location in the National Park "fairly and reasonably related in scale and kind" to a proposal to extract 376,000 tonnes of fluorspar in another location in the National Park.
59. It is clear from their witness statements that the members were very concerned that there was uncertainty as to what development could lawfully take place under the 1952 permission. Clarifying the position at the eastern end of Longstone Edge was, in the view of Miss Crowe:
- "... a massive environmental gain. Under the existing planning permission at Longstone Edge, it seemed to me that there remained the prospect of both vein minerals and limestone being removed from that site. This would have caused a huge scar in the landscape, and led to major traffic issues through the removal of aggregate by road."
60. Similar views are contained in the witness statements of Mr Hams and Miss Ash (see above). While the report reminded members of the rival interpretations of the 1952 permission, they were not advised that those legal arguments had to be evaluated against the background of the officers', and the second defendant's, opinion, albeit an opinion disputed by the claimant, that there were no significant vein mineral reserves in the section 106 land. The first defendant maintains that the Committee members were well aware of the circumstances at Longstone Edge because it was, in effect, a cause celebre among the development control issues in the National Park. However, there is no recognition in the three members' witness statement that it was the opinion of both the first defendant's officers and the second defendant that there were no significant vein mineral reserves in the land covered by the section 106 agreement. That information would clearly have been relevant in assessing the extent of the risk that if there was no section 106 agreement there might be "a huge scar in the landscape", and hence in balancing the degree of benefit that would be conferred by the section 106 agreement against the adverse visual impact of the proposed development at Winster Moor on the National Park.
61. On the face of the agreement, its ostensible purpose was to prevent the second defendant and, by virtue of the option agreement, any other party, from winning and working fluorspar at Longstone Edge under the 1952 permission in exchange for a planning permission which enabled the second defendant to extract 376,000 tonnes of fluorspar at Winster Moor (leaving the limestone on that site for restoration purposes). If that was the true purpose of the section 106 agreement, one can see how members might have reasonably concluded that the tests of "direct relationship" and "fairly and reasonably related in scale and kind" were met.

62. However, if the true purpose of the section 106 agreement was not to prevent the second defendant from winning and working fluorspar at Longstone Edge because the second defendant had no intention of pursuing such extraction activities in an area where it was satisfied that there were unlikely to be economically viable fluorspar reserves (see Mr White's evidence above); but was instead to prevent the claimant from extracting very large quantities of limestone at Longstone Edge as "other minerals" pursuant to its interpretation of the 1952 permission in return for a planning permission to the second defendant to extract fluorspar at Winster Moor, then it is, to put it at its lowest, debatable whether there was a direct relationship between that which was being prevented by the section 106 obligation and that which was being permitted by the planning permission, and even if there was a direct relationship, whether that which was being prevented was "fairly and reasonably" related in "scale and kind" to that which was being permitted.
63. Clearly, the members considered that there would be a "massive environmental gain" if the possibility of large scale extraction of limestone at Longstone Edge could be prevented, but the greater the planning gain offered in a section 106 agreement, the more important it is to consider very carefully whether it is fairly and reasonably related in scale and kind to that which is being permitted, if the tests in Circular 1/97 are to be complied with. As paragraph B3 in Circular 1/97 explains:
- "Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant. Those benefits or parts of benefits which go beyond what is strictly necessary should not affect the outcome of a planning decision."
64. On the basis of the material before the members in the present case, making full allowance for the extent of their local knowledge (see also the sustainability ground below), it is difficult to see how they could have applied the tests in paragraph 7 of Circular 1/97, the tests of necessity, direct relationship and fair and reasonable relationship in scale and kind, on a properly informed basis, even if, looking at the evidence as a whole, there was no "separate evidence" that they were probably led into an erroneous understanding of the policy guidance in the Circular in any event.

#### Sustainability

65. In his judgment granting permission to apply for judicial review, Ouseley J summarised this ground of challenge in paragraphs 7 to 10 of his judgment:

"7. There is a third and related point which Mr Kingston makes. What he says, and this was the development of the point, is that if it is legitimate in deciding whether to grant permission for something, which taken by itself would not get permission, to take account of the benefit accruing from the surrender of other mineral rights, there has to be more provided in order for a proper comparison to be done that was provided at least in the officer's report here. It is correct that there is comparatively little by way of analysis of the potential impact of the working of the eastern end of Longstone Edge. The Authority's landscape architect recommended, and his recommendation was

**IN THE HIGH COURT OF JUSTICE**  
**QUEENS BENCH DIVISION**  
**ADMINISTRATIVE DIVISION**

**Claim No: CO/6149/2004**

**In the matter of claim for Judicial Review**

**The Queen**  
**(on the application of Bleaklow Industries Limited)**

**Claimant**

**-v-**

**Peak District National Park Authority**  
**Glebe Mines Limited**

**1<sup>st</sup> Defendant**  
**2<sup>nd</sup> Defendant**

**MMC Mineral Processing Limited**

**Interested Party**

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**First Witness statement of Clinton John White**

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I Clinton John White BSc (Hons) MIMMM of Cavendish Mill, Stoney Middleton, Hope Valley, Derbyshire, S32 4TH MAKE THIS WITNESS STATEMENT AND SAY as follows:

1. Since 1999, I have worked for the 2<sup>nd</sup> Defendant and am currently employed as the Director (Mining and Technical Services). Between 1989 and 1999, I worked for Laporte Minerals. I have extensive knowledge of all aspects of vein mineral exploration, deposit evaluation, extraction and processing.
2. Fluorspar and baryte bearing ores have been processed in Derbyshire since 1938, initially by Glebe Mines and latterly by Laporte Minerals. LRM Limited initially acquired the business assets of the Laporte Minerals operation in November 1999 and the operation continues through the Second Defendant which is now a separate business unit.
3. The Second Defendant is involved in the processing of fluorspar containing ores to make acid-grade fluorspar and operates from Cavendish Mill, Stoney Middleton, Hope Valley, Derbyshire, S32 4TH. The Second Defendant is the only producer of acid-grade fluorspar in the United Kingdom. Calcium Fluoride is used to make hydrofluoric acid, the starting point for the manufacture of a range of fluorine containing industrial

chemicals including refrigerant gases, non-stick coatings, anaesthetics, welding rods and refining elements in the aluminium, uranium, steel and glass fibre industries.

**Planning permission NP/DDD/0503/282**

4. Planning Permission NP/DDD/0503/282 which is challenged by the Claimant was granted by the First Defendant to the Second Defendant on 7 September 2004 ("the planning permission"). The planning permission was granted following execution on 7 September 2004 of an agreement pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) between the First Defendant and the Second Defendant ("the section 106 agreement"). The planning permission permitted the Second Defendant to extract fluorspar and associated vein mineralisation from land at Winster Moor, South of Pikehall Lane, Winster ("Winster"). The site at Winster occupies 7.10 hectares of agricultural land and contains within its boundary an old disused vein mineral open pit. Winster is located some 21 km by road from Cavendish Mill.
5. The planning permission is for extraction of some 376,000 tonnes of vein mineral ore by open pit means in three phases over a four year period. Minerals will be extracted under lease from the mineral owner, to whom, a royalty will be paid on every tonne extracted. Mineral extraction is sub-contracted on the site and the Second Defendant is responsible for the management of day to day operations, health and safety and environmental performance.
6. Progressive restoration will be undertaken wherever possible. The southern and up-dip part of the ore body will be extracted first, allowing subsequent overburden to be used progressively as restoration backfill. Subsequently, an access will be developed from the north to extract the deeper central parts of the deposit to a maximum depth of 36 metres below original ground level with safety benching in the host limestone/ dolomite. Soil and overburden waste rock will be stored on site in temporary stockpiles for later use in restoration. Following completion of mineral extraction a further year will see final restoration take place to form a landscaped dry valley feature followed by an aftercare period of five years. The Second Defendant does not seek to sell any aggregate products

from Winster and nor does it seek to import any inert materials or waste to complete restoration.

7. Extraction commenced at Winster on 8 September 2004, the day after the section 106 agreement was signed. Commencement of operations followed five years of geological evaluation, environmental and planning work. The site was extensively drilled and trenched under General Permitted Development rights and was also used as a test ground for a major DTI match funded project undertaken in conjunction with the University of Leicester, MIRO, Geomatrix and the British Geological Survey.
8. The Second Defendant applied for the planning permission in April 2003 following extensive Environmental Impact Assessment works undertaken by Wardell Armstrong Consulting Engineers. The EIA assessed the potential impacts of the proposed works relating to noise, blasting and vibration, traffic, ecology, cultural heritage, soils and agriculture, dust, hydrology and hydrogeology, cave systems and visual impact.
9. A significant mitigating factor, particularly in terms of the visual impact of the proposed development was its very short duration. A study determined that open pit extraction was the optimum method of extraction due to geotechnical, recovery and environmental considerations. Additionally a geotechnical assessment was undertaken on the proposed design. A voluntary restoration bond was offered to the First Defendant as part of the application.
10. Under an archaeological watching brief, soil has been stripped from about 40% of the site at Winster. Along with rock overburden, soil has been stocked in temporary piles up to 3 metres in height around the perimeter of the site. To date, approximately 30,000 tonnes have been delivered to Cavendish Mill. Work has progressed below original ground level to an average depth of circa 10m exposing competent, but weathered, limestone and relatively weak dolomitised limestone beds dipping generally to the north. Also exposed is extensive vein mineralisation (comprising fluor spar, barytes and lead) broadly in line with the geological interpretation placed on the exploration data.

11. In granting the planning permission, the First Defendant was concerned to ensure that there would be no further vein mineral extraction at Peak Pasture, Longstone Edge, within the National Park. Laporte Minerals had undertaken exploratory works on Peak Pasture and reviewed its historical production data from this area. Laporte Minerals found that there was no evidence to support any significant vein mineral reserves (fluorspar). The Second Defendant is expert in its field and agrees with this view.
12. At this point I would like to define what I mean by a "mineral reserve". A "mineral reserve" is the economically mineable part of a measured and/or indicated mineral resource. It includes diluting materials and allowances for losses, which may occur when the material is mined. Appropriate assessments, which may include feasibility studies, will have been carried out, including consideration of, and modification by, realistically assumed mining, metallurgical, economic, social and governmental factors. These assessments demonstrate at the time of reporting that extraction is justified. The fundamental underpinning principle of reserve/resource evaluation and the terminology used is the issue of geological confidence. Consistent with the Second Defendant's policy of not pursuing mineral extraction activities on areas of land where there is unlikely to be economically viable fluorspar veins, pursuant to the section 106 agreement, the Second Defendant covenanted that it would not seek to allow its mineral rights at Peak Pasture to be disturbed.

#### **Suspension of activities at Winstar and prejudice to the Second Defendant**

13. At this stage, it is not possible to calculate the precise value of losses that would be sustained by the Second Defendant in the event of any suspension of activity at Winstar. However, given the nature and size of the Second Defendant's operation, any such losses would be extremely serious and in all likelihood fatal to the business. Different sorts of loss would be occasioned to the Second Defendant and I now consider these in turn.

#### **Commercial consequences**

14. On the basis of its known vein mineral reserves, the Second Defendant has agreed a new contract with its principal customer, Ineos, commencing on 1<sup>st</sup> January 2005. This

contract represents 92% of the Second Defendant's current order book. The contract is for the supply of 60,000 dry metric tonnes per annum of Acid Grade (AG) fluorspar. In order to service this contract, there is a requirement for delivery of a total of some 38,000 wet tonnes of crude ore per month to Cavendish Mill. The 2,000 tonnes of ore per week from Winster represent an essential contribution of 25% of total feed to the plant.

- 15 Were any form of suspension of activities at Winster to be granted and the Winster ore were no longer to be available, lost production would equate to 1,150 dry metric tonnes of fluorspar concentrate per month. This is equivalent to a total annual production loss of 13,800 dry metric tonnes of fluorspar. Put another way, this would represent some 25% lost revenue to the Company, not including lost revenues from by-product barytes, lead and aggregates.
- 16 Moreover, Ineos is totally reliant on the Second Defendant for supply of its raw material. The businesses of Ineos and the Second Defendant are interdependent. Ineos currently demands 5,000 tonnes per month and the company would not tolerate any uncertainty over the supply of raw materials. Reduction in supply to Ineos would mean that its plant production targets would be unsustainable with resultant downtime of plant at significant cost.
- 17 Short term import supply on a spot purchase basis would not be an option. It is estimated that fluorspar imported to supplement any shortfall would require a minimum lead-time of about three months. The alternative for Ineos would be to place total reliance on imported fluorspar with the added cost of shipment of a commodity based on dollar pricing. I am aware that Ineos has previously considered other options should the European fluorspar supply situation become untenable including a total shutdown of their Runcorn operation and transfer of production to China.
- 18 In the event of any suspension in activity at Winster, Ineos would in all likelihood end its supply contract with the Second Defendant. Loss of the Ineos contract would inevitably result in closure of the Second Defendant's business. The Second Defendant would also be open to a claim for breach of contract by Ineos.



- 19 Given any form of suspension of working at Winstar, the worst case scenario is that the interdependent businesses of the Second Defendant and Ineos would no longer be viable at lower rates of production and supply and would have to close. The Ineos business is highly integrated with its downstream derivatives that would also be threatened.
- 20 Potential costs of closure are very substantial and relate to redundancy payments, rehabilitation and decommissioning costs. Shutdown costs for the Second Defendant relate primarily to redundancy payments, rehabilitation of Cavendish Mill, offices and mine sites and decommissioning of the tailings lagoons. Further, both the Second Defendant and Ineos are important sources of employment. The Second Defendant directly employs 53 workers and is a major employer in a rural environment. Ineos is a major employer on Merseyside.

#### **Operational consequences**

21. The total operational costs to the Second Defendant that would result from a suspension of operations at Winstar would be significant. At present, the extraction and development works at Winstar are sub-contracted to Oldfield Plant with the Second Defendant assuming the lead role as operator of the site. Should extraction be suspended, the Second Defendant would remain obliged to the contractor for the hire of an excavator with operator. This cost would need to be met to guarantee the availability of machine and operator upon resumption. Vein mineral extraction is a highly specialised operation and in my experience, very few 360° hydraulic excavator drivers have the aptitude or skill to identify vein mineralisation and to maintain grades above cut-off.
22. The alternative would be to off-hire which would incur cost penalties associated with removing and later returning plant to site. If the plant were to be off-hired it is most likely that the operators would find other work, given the general nature of the plant hire industry. In turn, this would lead to competence and training issues for the Second Defendant upon resumption of working.

23. Should the plant remain at Winster during any period of suspension, there would be an obvious risk of theft or vandalism and a cost associated with replacement and repair. Whether plant remains on-site or not, regular security patrols would be required to ensure the integrity of the site and the safety of the general public.
24. The haulage contractor has invested in 3 8-wheel 20 tonne road lorries and engaged 3 staff specifically to haul ore from Winster to Cavendish Mill for the next 4 years. These would have to be re-deployed or laid-off at a cost to the contractor.
25. As part of routine daily operations, work is undertaken on such items as faces, edges, roads, stockpiles, bunds and drainage to prevent site degradation. When work ceases a degree of degradation occurs with resultant health, safety and environmental implications and the longer this interruption the more serious the condition of the site becomes. Consequently, upon any future resumption of activity, there would be a period during which such issues would need to be resolved.
26. The Second Defendant would remain liable for rental of the site despite the lack of production and revenue. There would be a loss of income for the mineral owner in the form lost royalties from whom the Company has a mineral lease.

#### **Health and safety and security consequences**

27. The implications for public safety of any suspension of operations at Winster are a serious consideration. The Second Defendant is bound by strict regulatory requirements. Having declared Winster an active quarry, one of the requirements would be to conduct daily site inspections. The Second Defendant would be required to send personnel to the site on a daily basis. In the event of an accident at the unmanned site, the Second Defendant would be liable to prosecution or become the subject of a civil claim.
28. An empty quarry presents an obvious attraction to those prepared to commit intentional trespass. Site infrastructure such as fuel tanks, plant and machinery, and the quarry faces themselves attract mineral collectors together with those intent on theft or vandalism. Each year, throughout the country, there are many incidents involving juveniles in

quarries. In the experience of the Second Defendant, the best deterrent is a continued full time presence.

29. Despite the provision of secure fencing, gates, warning signs and daily inspection, two incidents involving accidental trespass have already occurred at Winster. These involved one lost rambler and an incursion into the site by livestock. Both incidents were dealt with by full time on site contractors. There are obvious hazards to third parties or livestock if similar events were to occur on an empty site where they may go unrecorded for a prolonged period.
30. It is particularly noteworthy that if an interlocutory injunction were to be granted, the site would be dormant over the peak spring, summer and autumn periods, including school summer holidays. In my view, this would heighten the potential for misadventure.

#### **Environmental consequences**

31. An empty and apparently abandoned or dormant site would present a significant attraction to fly tippers. The Second Defendant would be liable for monitoring and dealing with illegally tipped waste materials, thereby incurring wasted costs.
32. Fuel thefts tend to be indiscriminate with no regard for the environment. Should this occur, there exists the potential for ground contamination which may not be discovered or dealt with for some time. There would be no one on site to deal with drainage/ site water issues that at present are managed by the contractor.
33. Perhaps the most significant environmental concern is that associated with the visual impact of the soil and overburden heaps. These would be present for a much longer period than if the site were to be worked in accordance with the planning permission.
34. Over a period of 15 years or so, part of the site was worked intermittently by a previous operator with significant visual impact relating to large limestone overburden heaps. Local residents and visitors to the National Park may well remember this and could be

forgiven for drawing comparisons with the current operations of the Second Defendant and believing that the Second Defendant has not acted responsibly. The requirement for additional time to extract the minerals if an injunction is served would mean a prolonged visual impact in the National Park.

#### **Planning consequences**

35. In the event of a stay or interlocutory injunction, the period of suspension would cause the life of the site to over-run the end of the planning permission. Accordingly, an extension to the time period would be required. This would result in the need for a further application to the First Defendant with no guarantee of consent being granted.
36. The Second Defendant has worked hard over the last five years to operate in a responsible manner and to gain the trust of those who live within the National Park. Winster has a history of intermittent working. If work were to be suspended, the Second Defendant is concerned that the perception of members of the public would be that history was repeating itself with the Second Defendant sitting on a dormant site with significant visual intrusion. This would have an incalculable effect on the prospects of success of future planning applications in what is a highly sensitive environment.

#### **Delay**

37. On 17 June 2004, Solicitors acting on behalf of the Claimant wrote a detailed letter to the First Defendant, threatening judicial review should, amongst other things, the planning permission be issued. The planning permission was issued to the Second Defendant on 7 September 2004.
38. In commencing its claim for judicial review on 6 December 2004, the Claimant has not acted promptly. Work commenced at Winster on 8 September 2004. Further, delay of nearly three months on the part of the Claimant is inconsistent with its claim for a stay or interlocutory injunction suspending implementation of the planning permission.

39. In all the circumstances set out above, I respectfully urge the Court to deny the relief sought by the Claimant.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true.

Full name: Clinton John White

Name of 2<sup>nd</sup> Defendant's solicitors: Cobbetts

Signed:.....

.....

Dated:..... 25 / 1 / 05 .....



**THIS DEED** is made the

23<sup>rd</sup>

day of

March

2004

**BETWEEN**

- A PEAK DISTRICT NATIONAL PARK AUTHORITY ("MPA")  
of Aldern House Baslow Road Bakewell Derbyshire DE45 1AE
- B GLEBE MINES LIMITED ("Glebe")  
whose registered office is at Cavendish Mill Stoney Middleton Derbyshire S32 4TH
- C THE HONOURABLE PEREGRINE ANDREW MORNY CAVENDISH (commonly called The Marquess of Hartington) PETER ANTHONY BOSTOCK and RICHARD GERVASE BECKETT all care of 21 Buckingham Gate London SW1E 6LS ("Devonshire Maintenance Fund Trustees")
- D BARCLAYS BANK PLC ("the Chargee")  
c/o Barclays Loan Servicing Centre P.O. Box 299 Birmingham B1 3PF

**RECITALS**

1. MPA is the Mineral Planning Authority for the area within which the Restricted Land is situated and by whom the Obligations created by this deed are enforceable
2. The title to the mines and minerals beneath the Restricted Land is as follows:
  - 2.1 Devonshire Maintenance Fund Trustees are the freehold owners of the mines and minerals in parts of the Restricted Land included in the lease next mentioned
  - 2.2 Glebe is the leaseholder of the said mines and minerals by virtue of a lease ("the Mining Lease") dated 9th December 2003 and made between the Devonshire Maintenance Fund Trustees of the one part and Glebe of the other part for a term of 21 years commencing on 1st April 2003
  - 2.3 Glebe is registered with an absolute freehold title of Deep Rake (except the lead ore and rights excepted on the enfranchisement thereof) under the title number DY354390 free from any registered charge
  - 2.4 Glebe is also registered with an absolute freehold title of Sallett Hole Mine Coombs Dale Stoney Middleton under title number DY354554 free from any registered charge
  - 2.5 Glebe is further registered with an absolute freehold title of Longstone Moor Farm Longstone Moor Great Longstone under title number DY355942 subject to a registered charge dated 4 April 2002 in favour of the Chargee
  - 2.6 Glebe is further registered with a possessory title in the freehold land at Longstone Moor aforesaid under title number DY364035 free from any registered charge
3. Glebe has by the Planning Application applied to MPA for permission to carry out the Development
4. MPA has decided to grant planning permission for the Development in accordance with the Planning Application and supporting information statements and accompanying plans subject to conditions and subject to the making of this Agreement without which planning permission for the Development would not be granted

NOW THIS DEED made in pursuance of section 106 of the Town and Country Planning Act 1990 as amended and which is a planning obligation for the purposes of that section

WITNESSES as follows:

1. DEFINITIONS

In this deed:

- 1.1 "MPA" "Devonshire Maintenance Fund Trustees" "Glebe" and "the Chargee" shall include their respective successors in title and assignees  
"Devonshire Maintenance Fund Trustees" includes the named trustees and their successors in title for the time being entitled to the reversionary freehold estate in the land/mines in reversion immediately expectant upon the term of years created by the Mining Lease referred to in <sup>Article</sup> ~~Clause~~ 2.1 AMS ✓
- 1.2 "Condition" followed by a numeral refers to the condition bearing that number in the Planning Permission W RB
- 1.3 "Early Cessation of Working" means a permanent cessation of winning and working of minerals as defined in Condition 88 DUM
- 1.4 "Development" means the development for which permission is requested and described in the Planning Application and supporting information statements and accompanying plans
- 1.5 "Existing Planning Permissions" refers to the planning permissions details of which are contained in Part I of the Second Schedule
- 1.6 "Longstone Edge Interim Restoration Scheme" means the scheme with the said title supplied by Glebe, a copy of which accompanies this Agreement, which is intended to apply in the event of the Early Cessation of Working
- 1.7 "Obligations" means the covenants set out in the Third Schedule and "Obligation" refers to any one of them
- 1.8 "Plan" means the Drawing Number LE2 dated November 2000, a copy of which is annexed to this Agreement
- 1.9 "Planning Application" means the application (brief details of which are set out in Part 2 of the Second Schedule) made by or on behalf of Glebe dated 9th November 2000 and registered by MPA on 14th November 2000 and the Minerals Application Form and supporting information statements and accompanying plans deposited with MPA and forming part of the Planning Application
- 1.10.1 "Planning Permission" means the planning permission, a draft copy of which is annexed hereto, to be given by MPA under the reference NP/DDD/1100/473 in response to the Planning Application
- 1.10.2 "Duration of the Planning Permission" means the period commencing upon the date of the Planning Permission to 30th November 2015 during which



mining operations may be carried out upon the Restricted Land in accordance with the Planning Permission

- 1.11.1 "Restoration Works" means the works to be carried out and completed during the Duration of the Planning Permission on the Restricted Land after the completion of mining operations the nature of such works to be determined in the manner described in Conditions 77 to 84 inclusive and in accordance with the plans/details submitted in the Planning Application and also with schemes to be submitted under the Conditions
- 1.11.2 "Aftercare Works" means the works required to be undertaken in accordance with the aftercare scheme referred to in Condition 85 in order to bring the Restricted Land to the required standard for use for agriculture and amenity (including nature conservation) after the completion of the Restoration Works PROVIDED THAT in the event of an Early Cessation of Working the reference to "Restoration Works" and "Aftercare Works" shall refer to the works described in the "Longstone Edge Interim Restoration Scheme"
- 1.11.3 "Period of Aftercare" means the period of five years from the completion of each phase of the Restoration Works as identified on the approved plans (that is to say, the plans listed in and attached to the Planning Permission)
- 1.12 "Restoration Bond" refers to the bond or series of consecutive bonds to be entered into by Glebe and a bank insurance company or other financial institution approved by MPA with MPA in the form (or any variation thereof approved by MPA) set out in Fourth Schedule in such case any decision by MPA as to approval shall not be unreasonably withheld or delayed
- 1.13 "the Restricted Land" means the land described in the First Schedule and bound by the Obligations
- 1.14 "Surety" means any bank insurance company or other financial institution first approved in writing by MPA (such decision by MPA as to approval shall not be unreasonably withheld or delayed) and bound to MPA by the Restoration Bond

## 2. INTERPRETATION

- 2.1 Unless the context otherwise requires, references in this Agreement to schedules are to schedules in this Agreement
- 2.2 The headings to clauses and other parts of this Agreement are for reference only and do not affect its construction
- 2.3 This Agreement may only be varied in writing signed by or on behalf of all the parties
- 2.4 An Obligation on a party to do any act or thing includes a requirement to procure that it be done and any Obligation not to do any act or thing includes a requirement not to allow that act or thing to be done by any person under its control

- 2.5 Obligations owed by or to more than one person are (except where the context otherwise requires) owed by or to them jointly and separately
- 2.6 Unless otherwise specified, a reference to legislation is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, byelaw, statutory guidance or code of practice made or granted under such legislation
- 2.7.1 Any action herein required to be carried out or performed by MPA may be carried out or performed by an officer of MPA acting on its behalf
- 2.7.2 References to the "Head of Law" of MPA shall be deemed to include any person holding that post by the same or any other title or any officer of MPA subsequently appointed to carry out the services of a solicitor on behalf of MPA

### 3. PERFORMANCE OF THE OBLIGATIONS

- 3.1 Glebe to the extent of its legal estate and interest in the Restricted Land and the mines and minerals therein HEREBY COVENANTS with MPA to observe and perform the Obligations in respect of the Restricted Land
- 3.2 In the event that the Mining Lease referred to in recital 2.2 shall be surrendered forfeited determined or otherwise no longer be in existence the Devonshire Maintenance Fund Trustees to the extent of their legal estate and interest in the Restricted Land and the mines and minerals therein HEREBY COVENANT with the MPA to observe and perform the Obligations in respect of the Restricted Land
- 3.3 The Chargee hereby consents to the execution of this deed by Glebe and agrees that subject as herein provided the part of the Restricted Land comprised in the said title DY355942 shall be bound by the Obligations PROVIDED that the Chargee shall not be liable for any breach of covenant occurring unless and whilst it is mortgagee in possession of that said part of the Restricted Land

AMB ✓  
LA  
LB  
CD  
J. P. P. P. P.

### 4. CONDITIONS AGREED BETWEEN THE PARTIES

It is agreed and declared as follows:

- 4.1 No person shall be liable for breach of a covenant contained in this Agreement occurring after parting with all interest in the Restricted Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 4.2 The Obligations shall take effect upon the date of this Agreement
- 4.3 This Agreement is a local land charge and shall be registered as such
- 4.4 Nothing in this deed will fetter the discretion of MPA in the exercise of any of its statutory functions or powers

5. REVOCATION

The parties hereby further agree that the Existing Planning Permissions shall be deemed to be revoked forthwith without any right to claim compensation

6. RESTORATION WORKS

Notwithstanding anything to the contrary in the Planning Permission the Obligations to commence and complete the Restoration Works and consequently the Aftercare Works shall commence:

- 6.1 upon Early Cessation of Working upon the Restricted Land at any time before the expiration of the Duration of the Planning Permission OR
- 6.2 if during the Duration of the Planning Permission Glebe enters into liquidation whether compulsory or voluntary (except for amalgamation or reconstruction of a solvent company) or has an administrative or other receiver appointed for its operations OR
- 6.3 If immediately prior to the expiration of any Restoration Bond Glebe shall not have paid to the Surety the premium in respect of the next consecutive Restoration Bond (or an extension of the period of the then existing Restoration Bond) or shall have failed to obtain confirmation that the then existing Restoration Bond will be replaced by a further consecutive Restoration Bond (in identical terms or otherwise in terms approved in advance by MPA in writing in response to a written request from Glebe) with the same Surety or another Surety first approved in writing by MPA

7. RELEASE OF THE RESTORATION BOND

- 7.1 When the Restoration Works and the Aftercare Works have been completed MPA will release the Surety from its Obligations secured by the Restoration Bond by means of a certificate to that effect signed on behalf of MPA by its Head of Law
- 7.2 The MPA may at its reasonable discretion at any time or times in writing given to Glebe and the Surety reduce the amount secured by the Restoration Bond to reflect any phased completion of the Restoration Works
- 7.3 Similarly upon the completion of each phase of the Aftercare Works the amount secured by the Restoration Bond may be reduced by an amount specified by MPA in manner aforesaid to reflect the reduced cost of the Aftercare Works

8. DISPUTES

Disputes or differences between the parties hereto may if the parties agree be referred to a single arbitrator to be agreed by the parties hereto in accordance with

the provisions of the Arbitration Act 1996 but this shall not prevent MPA from applying for an injunction or other enforcement action.

IN WITNESS whereof this agreement has been duly executed as a deed by the parties to it the day and year first before written

**FIRST SCHEDULE**

(the Restricted Land)

ALL THOSE areas of land at or near Longstone Edge Great Longstone Derbyshire edged red on the Plan the larger area of land encompassing Deep Rake Bow Rake High Rake Arthurton West Watersaw Rake Watersaw Mine Compound Longstone Moor and the Beeches and the smaller being the site of Sallett Hole Mine

**SECOND SCHEDULE**

**Part 1**

**(the Existing Planning Permissions)**

<u>Date</u>	<u>Reference</u>	<u>Nature of Permission</u>
6th May 1949	BAR/249/14	Re-commence mining operations in an existing Lead Mine, not at present in use, at Stoney Middleton
27th July 1951	1898/9/27	Winning and working of fluorspar at Betney Cob, Longstone Moor
27th July 1951	1898/9/45	Continuation of workings for fluorspar and barytes at Longstone Edge
24th April 1952	1898/9/69	Surface working of fluorspar and barytes at Deep Rake, Hassop
27th September 1971	NP/BAR/971/6	To work fluorspar lead and barytes by underground mining at Longstone Edge
28 Jun. 1977	NP/WED/277/59	For the winning and working of fluorspar, lead and barytes by extension of existing underground workings and construction of No.2 entrance to Sallett Hole Mine
27 Feb. 1978	NP/WED/1177/464	Erect a fan housing at the ventilation shaft, Sallett Hole Mine, Great Longstone

**Part 2**

**(the Planning Application)**

**Reference Number – Proposal**

NP/DDD/1100/473 – Consolidating application for the opencast and underground extraction of vein mineralisation, including crushing and sale of limestone, import of processed mineral waste tailings for restoration, surrender of consented area, variation of conditions and small extension area

THIRD SCHEDULE  
(Obligations)

1. That development shall not after the date hereof be carried out upon the Restricted Land in accordance with the planning permissions conferred by the Existing Planning Permissions
2. Not to seek any compensation for the deemed revocation of the Existing Planning Permissions nor to any formal revocation orders subsequently made to the same or similar effect nor for its inability to carry out the development permitted thereby
- 3.1 If either (a) there shall be an Early Cessation of Working or (b) Glebe shall at any time within the Duration of the Planning Permission fail to procure or maintain in force a Restoration Bond then to carry out the Restoration Works and the Aftercare Works in accordance with the "Longstone Edge Interim Restoration Scheme" forthwith upon being required in writing by MPA to do so
- 3.2 Except in the circumstances set out in paragraph 3.1 above to carry out and complete (a) the Restoration Works within the Duration of the Planning Permission and (b) the Aftercare Works during the Period of Aftercare in both cases in accordance with the conditions contained in the Planning Permission
- 3.3 In the event of default by any party responsible therefore in carrying out and completing the Restoration Works and/or the Aftercare Works to permit MPA or its contractor to enter upon the Restricted Land with all necessary workmen vehicles machinery tools and materials and to complete the aforementioned works
- 4.1 That Glebe will simultaneously with the completion of this Agreement procure provide and maintain a Restoration Bond being a bond or the first in a consecutive series of bonds with a Surety each to cover the Duration of the Planning Permission and the Period of Aftercare each Restoration Bond being for a period of not less than 3 years with the first bond running from the date hereof
- 4.2 The Restoration Bond shall be in the form set out in the Fourth Schedule with any revisions required by the Surety and approved by MPA such approval not to be unreasonably withheld or delayed in the sum of £400,000. (Four Hundred Thousand Pounds)
- 4.3 The Restoration Bond shall be in a form to bind Glebe and the Surety to MPA in order to secure the performance by Glebe of the Obligations to carry out and complete the Restoration Works and the Aftercare Works
- 4.4 The sum secured by the Restoration Bond will in the event of default by Glebe in performing the Obligations become payable to MPA forthwith in order to enable

MPA to cover the cost of completing or procuring the completion of the Restoration Works and/or the Aftercare Works

PROVIDED that Glebe shall be in default:

- a. if it shall be in breach of its said Obligations and shall not have commenced and be diligently proceeding to remedy such breach after having received written notice of such breach from MPA such notice to specify a reasonable time within which such breach is to be remedied or
- b. if it fails to make any payment due to the Surety for a consecutive Restoration Bond before the expiration of any period during which any current Restoration Bond shall be in force or
- c. if it fails to procure before the expiration of any period during which any Restoration Bond shall be in force the confirmation from the Surety that upon the expiration of such period the Restoration Bond will be renewed or a new Restoration Bond completed

FOURTH SCHEDULE  
(the Bond)

Form of Bond

BY THIS BOND GLEBE MINES LIMITED whose registered office is at Cavendish Mill Stoney Middleton Hope Valley Derbyshire S32 4TH (hereinafter called "Glebe") and [NAME OF SURETY] whose registered office is at [ADDRESS OF SURETY] (hereinafter called "the Surety") are held and formally bound unto PEAK DISTRICT NATIONAL PARK AUTHORITY of Aldern House, Baslow Road, Bakewell, Derbyshire DE45 1AE (hereinafter called "MPA") in the sum of **FOUR HUNDRED THOUSAND POUNDS** ("the Bond Amount") for the payment of which sum Glebe and the Surety bind themselves and their successors and assigns jointly and severally by these presents

SEALED with the respective common seals of Glebe and the Surety and dated this day of                      Two thousand and

WHEREAS Glebe by an Agreement (hereinafter called "the Planning Agreement") dated the [INSERT DAY] day of [INSERT MONTH] 200~~2~~ and made between MPA of the first part Glebe of the second part the Devonshire Maintenance Trustees of the third part and Barclays Bank plc of the fourth part has agreed with MPA inter alia provisions for the carrying out and completion of the Restoration Works and the Aftercare Works in respect of the Restricted Land

NOW the conditions of the above written Bond are as follows:

RB PNR X  
h  
CO  
JDM

1. If Glebe shall duly perform and observe its Obligations under the Planning Agreement according to the true purport intent and meaning thereof in respect of the carrying out and completion of the Restoration Works and the Aftercare Works and shall receive a notification in writing from MPA to that effect then this Bond shall thereupon be discharged and the Surety released from all its responsibilities hereunder
2. Immediately upon default by Glebe in performing and observing the whole or any part of its Obligations in carrying out and completing the Restoration Works and/or the Aftercare Works the Surety shall be and become liable to satisfy and discharge the costs and expenses incurred by MPA in carrying out and completing those works or any of them (or procuring the same) up to the Bond Amount but until the responsibilities of the Surety hereunder shall be discharged and the Surety released this Bond shall be and remain in full force and effect until the Restoration Works and Aftercare Works have been carried out and completed in accordance with the provisions of the Planning Agreement
3. No (a) variation in the terms of the Planning Agreement or the Planning Permission nor any further planning agreement or planning permission nor any variation in the nature of the Restoration Works and/or the Aftercare Works nor (b) any failure by MPA to initiate or complete enforcement action or proceedings against Glebe shall release Glebe or the Surety from any liability under this Bond
4. If Glebe shall have provided MPA with more than one concurrent Bond then the sums secured by such bonds shall be paid to and used by MPA to discharge the Obligations of Glebe in respect of the Restoration Works and/or the Aftercare Works in the date order in which the bonds were entered into
5. The Surety shall forthwith become liable to MPA if Glebe shall enter into liquidation whether compulsory or voluntary (except for amalgamation or reconstruction of a solvent company) or has appointed an administrative or other receiver of its undertaking or is in breach of its obligations pursuant to clause 2 of this Bond for the costs and expenses to be incurred by MPA in or about the commencement and completion of the Restoration Works and the Aftercare Works
6. The Surety may not assign the burden of its responsibilities hereunder except with the prior written consent of MPA and only to a bank, insurance company or other financial institution approved in writing by MPA

7. The definitions of "MPA" "Glebe" "Planning Permission" "Restoration Works" "Aftercare Works" "Obligations" "Head of Law" or any other words defined in the Planning Agreement shall be the same as the definitions contained in the Planning Agreement

8. This Bond shall not confer any benefit upon and no term hereof shall be enforceable by any person under or by virtue of the Contracts (Rights of Third Parties) Act 1999

9. 9.1 The obligations and liabilities of the Surety under this Bond shall cease and determine absolutely at 5pm on the [ ] day of [ ] 2003 (the "Expiry Time") save in respect of any breach of the Obligations on the part of Glebe which has occurred and in respect of which a claim in writing has been made by MPA upon the Surety prior to the Expiry Time setting out particulars of the relevant breach

9.2 For the purposes of clause 9.1 MPA may serve written notice of a claim upon the Surety prior to the Expiry Time in respect of costs and expenses to be incurred by MPA in the performance or discharge of any of the Obligations and may thereafter make supplemental claims (as well after as before the Expiry Time) in respect of such matters as and when costs and expenses are incurred

9.3 Notwithstanding clause 9.1 if prior to the Expiry Time the Surety shall deliver to MPA a notice in writing duly signed by an authorised representative of the Surety extending the period of this Bond to a date not less than three years from the then current Expiry Time ("an Extension Notice") the obligations and liabilities of the Surety hereunder shall continue to subsist and the date specified in such an Extension Notice shall be the Expiry Time

9.4 Subject to the foregoing provisions of this clause MPA may make one or more claims hereunder provided that the maximum aggregate liability of the Surety shall not exceed the Bond Amount

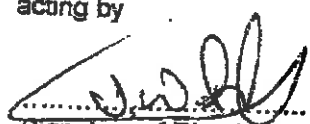
10. (a) Any notice to be given under this Bond by the Surety to MPA shall be delivered personally or by recorded delivery post addressed to the Head of Law at the address above given or such other address for service as shall have been previously notified in writing by MPA to the Surety

(b) Any notice to be given under this Bond by MPA to the Surety shall be delivered personally or by recorded delivery post addressed to the Surety at the address above given for the Surety or such other address for service as shall have previously been notified by the Surety to the Head of Law

Handwritten initials and a signature are present on the right side of the page, including a large signature that appears to be "DM" and some other initials above it.



Executed as a deed by Giebe Mines Limited )  
acting by )

  
.....  
Signature of Director

  
.....  
Signature of Secretary/Director

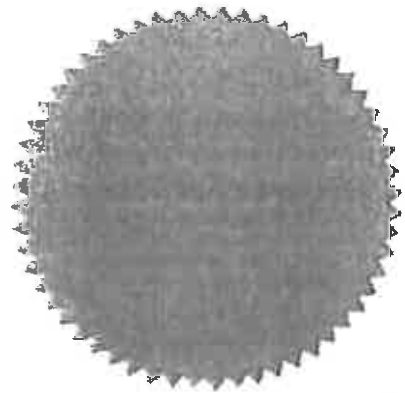
THE COMMON SEAL of the Surety )  
was affixed to this deed in the presence of )

.....  
Authorised Signatory

.....  
Authorised Signatory

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THE COMMON SEAL of  
PEAK DISTRICT NATIONAL PARK AUTHORITY )  
was affixed to this deed in the presence of )



Authorised Signatory

*Blanchard*

Executed as a deed by Glebe Mines Limited )  
acting by )

*[Signature]*

Signature of Director

*[Signature]*

Signature of Director/Secretary

SIGNED AS A DEED by the said THE MOST )  
HONOURABLE PEREGRINE ANDREW )  
MORNY CAVENDISH in the presence of )

*[Signature]*

(SIGNATURE)

*[Signature]*

SIGNATURE of Witness

MRS ELISABETH HAMILTON  
NAME of Witness IN BLOCK LETTERS

Beauley Hall,  
Bolton Abbey, Skipton  
North Yorkshire YO23 6HA  
ADDRESS of Witness