

Mr John Withinshaw
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Your ref: JPW.KW.1084B-005
Our ref: BP/CP/M2382
Date: 30 July 2010

By email and post

Dear Mr Withinshaw

Longstone Edge – Review of Old Minerals Permission

In the Authority's letter sent to you dated 30 June we indicated that we were seeking counsel's opinion on various matters in connection with the ROMP process and that we would inform you by 31 July 2010 how the Authority intended to take the matter forward.

We have now received an opinion from Robert McCracken QC and I enclose a copy for your information.

The issues in dispute principally relate to: (1) what information the Authority can require as part of the ROMP process and (2) whether the process should be put on hold pending a decision of the European Court of Human Rights in the Bleaklow Industries case. The Authority's position is as follows.

- (1) There has been some dispute as to what information can be required by the Authority, in particular whether we can require plans covering the whole site for the remaining life of the permission and supporting geological information. Counsel has advised that the Authority is entitled to ask for this information. We note also that in your letter of 12 September 2008 you appeared to accept that the ROMP application would require substantial amendment and that any Environmental Statement would have to cover not only the original 15 year period for which the ROMP application was made but the remaining period of the permission.

In order to be able to do a screening opinion the Authority needs to know what is being proposed. The plans attached to the ROMP application are out-of-date and need to reflect the changed circumstances. In particular they do not relate to what can lawfully be extracted under the 1952 planning permission as interpreted by the Court of Appeal.

The working plans originally submitted in 1997 should be amended to reflect the Court of Appeal judgment in the Bleaklow case and the 2008 EIA Regulations. Although it is likely that further development of the site would have significant environmental effects, whether this is so will depend on what mineral development is proposed.

The Authority takes the view that the working plans submitted at the screening stage should cover the whole site for the remaining life of the permission. They must reflect what is lawful under the 1952 planning permission and therefore we would expect them to be based on detailed geological information. We wish to make it clear that detailed geological assessment works, if not carried out at this stage, will be required before any ROMP scheme can be determined and that any new plans submitted will have to be amended if the proposed mineral development is not supported by detailed geological evidence. We would therefore strongly advise that the assessment works are done at this stage of the process and that they include all the exploratory works suggested by GWP Consultants in their letter to John Lomas of 3 December 2009 (previously provided to you).

- (2) With regard to your clients' appeal to the European Court of Human Rights, you will see that counsel has advised that he sees no reason to await the decision of the European Court. He says that the complaint is against the UK rather than the National Park Authority and is without merit.

Until the interpretation of the permission had been settled by the domestic courts the Authority felt that it was reasonable to agree extensions of time. However, now that we have the decision of the Court of Appeal we do not consider it appropriate for the ROMP process to remain on hold and we propose to continue the ROMP procedure as amended by the 2008 EIA Regulations.

In your letter of 18 May you suggested that my letter of 8 April was an assertion that the Authority would not abide by the effect of an ECHR declaration. This is not correct. In the event that the European Court were to rule in your client's favour the Authority would of course comply with the law and would do whatever was required of it. The Authority's approach is not aimed at pre-empting the decisions and deliberations of the ECHR but at moving forward a legislative process aimed at ensuring that appropriate modern conditions are attached to the 1952 mineral permission.

In conclusion, the Authority now grants a further extension of time to 31 October 2010 for the provision of information to enable it to undertake a screening opinion. The information required is that included in the Authority's letter to Bleaklow Industries Ltd of 12 August 2008.

Please note that the Authority is unlikely to grant a further extension of time for the provision of this information and that, under the 1999 Environmental Impact Assessment Regulations as amended, if the information requested is not provided by 31 October 2010 the mineral permission relating to the site will be automatically suspended.

As a final matter, you will see that counsel has advised that the Authority should continue to press for material which justifies the ability of your clients to pursue the application. Your clients are therefore reminded of the request in the Authority's letter of 12 August 2008 for confirmation of Bleaklow Industries Ltd's status in respect of the ROMP application.

We have written to Glebe Mines Ltd in similar terms and a copy of our letter is attached for information.

Yours sincerely

Bev Primhak (Mrs)
Head of Law