

OTHER MATTERS

PROHIBITION ORDER - PENBERRY QUARRY, ST DAVIDS

LEGAL AND POLICY BACKGROUND

Planning Policy

Minerals Planning Policy Wales (MPPW) (December 2000) sets out national land use planning policy guidance in relation to mineral extraction and related development in Wales. An important aspect of MPPW is the need for local planning authorities to maintain throughout the plan period adequate landbanks (stocks of reserves with planning permission) for aggregates which are currently in demand (paragraph 17). It also highlights the need for development plans to identify, and devise a strategy for dealing with, inactive sites with planning permission for future working which are considered unlikely to be reactivated for the foreseeable future (paragraph 19).

The Pembrokeshire Coast National Park Local Development Plan (September 2010) has had regard to the requirements of MPPW and as a consequence, includes Policy 26: Inactive Mineral Sites which states that where the Authority is satisfied that the winning and working of minerals or the depositing of mineral waste has ceased permanently it will investigate the appropriateness of serving a Prohibition Order on the owners.

Further detailed advice on the mechanisms for delivering national policy for aggregates extraction is set out in Minerals Technical Advice Note 1: Aggregates (MTAN 1) (March 2004). In relation to prohibition orders, MTAN1 states in paragraph 31 that:

'All Mineral Planning Authorities must each year assess and review the likelihood of future extraction from long inactive reserves that have not worked for 10 years and submit their findings to the Welsh (Assembly) Government at the end of each calendar year. This assessment must include two lists. One where extraction is, in the opinion of the Mineral Planning Authorities, likely to begin again and one where it is not. In either case a full justification for the judgement must be included. Where further extraction is judged unlikely, Prohibition Orders should be made without delay.'

The purpose behind this advice is to enable a clear picture to emerge of permitted reserves and likely future aggregates extraction. At present some landbanks are excessive and are distorted by a significant number of 'dormant' sites which are unlikely to work again in the future and are not the most sustainable source of supply. These extensive landbanks are largely a product of historical exploitation and if left unaltered this will often perpetuate unsustainable patterns of supply of aggregates. Whilst the National Park Authority is not required to maintain a landbank the reserves at sites within the National Park are currently counted towards a 'Pembrokeshire' landbank.

If any objections are received by Welsh Government within the 28 day period of public consultation and these objections cannot be resolved by negotiation, it is open to any objector to ask to be heard by an Inspector appointed by Welsh Government at a Public Inquiry. The Welsh Government will determine the outcome.

There is potential for any objector to claim costs if they consider that the Local Authority has acted unreasonably.

Compensation

The making of a Prohibition Order can give rise to a claim for compensation for the loss of the rights to use the land. However, special rules apply where a claim for compensation is made following a Prohibition Order relating to the prohibition of the resumption of mineral workings made on the grounds that the winning and working or depositing has permanently ceased.

The level of compensation potentially payable in respect of a Prohibition Order relating to the prohibition of the resumption of mineral workings and made on the grounds that the winning and working or depositing has permanently ceased is restricted by the Article 5 of the Town and Country Planning (Compensation for Restrictions of Mineral Working and Mineral Waste Depositing) Regulations 1997. The effect of this provision is that in assessing any claim for compensation as a result of a Prohibition Order made relating to the prohibition of the resumption of mineral workings made on the grounds that the winning and working or depositing has permanently ceased, the value of any mineral that cannot be won or worked, the value of any mineral waste that cannot be deposited, the value of any void that cannot be filled and the cost of complying with restoration or aftercare conditions in consequence of the Order is not taken into account, provided that the development was begun not less than five years before the date of the order being made and that no other prohibition, discontinuance or modification orders have been made in the last five years preceding the date of the order (both of which proviso's are fulfilled in this case). The costs of expenditure incurred in carrying out work which is rendered abortive by the provisions of the order and other loss or damage sustained which is directly attributable to the order is claimable, but, the first £7,800 of any claim is borne entirely by the owner(s).

The compensation position can therefore be contrasted with cases where Prohibition Orders relate to other activities, Revocation and Modification Orders (that is to say Orders which revoke or modify planning permissions under Section 97 of the Town and Country Planning Act 1990) or the sterilisation of reserves as a result of determining a new scheme of conditions under the provisions of Schedule 13 or 14 of the Environment Act 1995. Revocation and Modification Orders as well as the sterilisation of reserves as a result of determining a new scheme of conditions would result

PLANNING HISTORY

HR/367 – Quarrying – Permission Granted – 12 August 1949

Because of the particular nature and effect of mineral working and the longevity of mineral permissions, special provisions have been considered necessary to control the environmental effects. As a consequence, a number of legislative changes were made during the 1980's and 1990's which had direct effects on the above planning permission.

This planning permission will not expire until 21st February 2042. This expiration date arises from the Town and Country Planning (Minerals) Act 1981, where a 60 year time limit was made to apply to existing unlimited planning permissions granted before 22nd February 1982 and to run from that date.

The Environment Act 1995 provided for an 'initial review' and updating of minerals permissions granted between 1948 and 1982 and 'periodic reviews' of all mineral permissions thereafter. A distinction was made between 'dormant' sites and 'active' sites in Schedule 13 of the 1995 Act. A dormant site is one where no substantial development has been carried out in the period beginning on 22nd February 1982 and ending on 6th June 1995. No further development can be carried out on dormant sites until a new scheme of conditions has been submitted to, and approved by the mineral planning authority.

By the 31st January 1996, every mineral planning authority had to prepare a list of all 'dormant' and 'active' quarries in their area. The planning permission covering Penberry Quarry was classified as 'dormant' on the list prepared for the Pembrokeshire Coast National Park Authority at that time; i.e. no substantial development had been carried out in the period between 22nd February 1982 and 6th June 1995. An application for a new scheme of conditions was therefore required to be submitted and approved before any winning and working of minerals re-commenced. No submission has been received.

RELEVANT CONSIDERATIONS

As indicated above, there are two tests laid down by legislation that must be applied to determine whether or not the winning and working of minerals at a site has permanently ceased. An assessment of the Site against each of these tests is carried out below.

Has the winning and working of minerals or the deposit of mineral waste occurred to any substantial extent at the site within the last 2 years?

A mineral working survey carried out by the former Dyfed County Council in 1982 indicated no working taking place. There was at that time a concrete

noted that the site is extremely small in terms of the available resource and working the site is unlikely to be economically viable on that basis alone.

In addition, as the Site has been listed as 'dormant' under the provisions of the Environment Act 1995 no mineral working can take place until a new scheme of conditions has been submitted and finally approved. This allows the Local Authority to impose full modern conditions in relation to the operation of the site. Consideration of whether the site is capable of being worked to full modern conditions would depend on the scheme submitted. Given the sensitivity of the site (it lies within the boundaries of the Pembrokeshire Coast National Park, within a Historic Landscape in an extremely prominent position, and partly within a SSSI) and the nature of the potential impacts any application is likely to have to be accompanied by an Environmental Statement which would significantly increase the cost of preparing such an application. Such additional cost when weighed against the very limited resource still available at this site makes it extremely unlikely that the site would be viable in economic terms.

It is therefore concluded that the resumption of the winning and working of minerals or deposit of mineral waste to any substantial extent is unlikely on the basis of current evidence available to the Mineral Planning Authority.

For these reasons, it is considered that winning and working of minerals and/or the depositing of mineral waste at the Site has permanently ceased

Conditions

In making a Prohibition Order the Local Authority must consider whether it is appropriate to include:

- requirements to alter or remove plant and machinery;
- requirements to take steps to alleviate injury to amenity caused by the winning and working and depositing of minerals;
- a requirement to comply with conditions subject to which any extant planning permission was granted subject to; and
- a restoration condition.

In this instance, the derelict buildings on the site are considered to have an adverse effect on the visual amenity of the area. It is therefore considered appropriate to recommend a condition of the Order that these buildings be demolished. No other works are considered to be necessary. It is considered that such a requirement would be a restoration condition which would not attract any claim for compensation. However, if it were to be successfully argued that it was a requirement to take steps to alleviate injury to amenity caused by the winning and working and depositing of minerals then a claim for compensation may be forthcoming. This has been considered and estimates have been obtained. The cost of such works would be substantially

