

CHESHIRE EAST COUNCIL

STRATEGIC PLANNING BOARD

Date of meeting: 8 January 2014

Report of: David Malcolm – Interim Planning & Place Shaping Manager

Title: White Moss Quarry, Barthomley
Revocation of Certificate of Existing Lawful Use for the parking and storage of vehicles machinery and equipment

1.0 Purpose of Report

- 1.1 To update Members of Strategic Planning Board on matters relating to the proposed revocation relating to the issuing of a Certificate of Lawful Use or Development (CLEUD) at White Moss Quarry, Barthomley

2.0 Decision Required

- 2.1 To confirm revocation of the Certificate of Existing Lawful Use for the parking and storage of vehicles, machinery and equipment for White Moss Quarry, Bathomley which was issued in December 2011.

3.0 Background

- 3.1 A CLEUD was submitted to the Council on 18 October 2011 for the use of an area of land for the parking and storage of vehicles, machinery and equipment at White Moss Quarry, Barthomley. The land is known locally as Triangular Field and indicated on the attached plan.
- 3.2 The CLEUD sought to demonstrate the use by means of the submitted information which included a statutory declaration, statement and an aerial photograph of the site in 2000. In the absence of information to the contrary and taking the appropriate test of 'balance of probabilities', the Council were satisfied at the time that based on the submitted information that the use had taken place for in excess of 10 years.
- 3.3 A positive Certificate was issued by notice dated 14 December 2011. The notice stated the following:

The Council hereby certifies that on 16-Sep-2011 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged red on the plan attached to this certificate, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

1. *The applicant has demonstrated that on the balance of probability the land has been used for the parking and storage of vehicles, machinery, building materials and other equipment for a period exceeding 10 years, prior to the date of this application.*

First Schedule

*Land has been used for the parking and storage of vehicle, machinery, equipment and building materials for a period in excess of 10 years
(Certificate of Lawful Development for Existing Use)*

Second Schedule

Land Known as Triangular Field adjacent to White Moss Quarry, Butterton Lane, Barthomley, Crewe.

- 3.4 Members may recall that at SPB on 17 July 2013 they were provided with a confidential update on matters relating to the CLEUD. Following the decision from the Local Government Ombudsman in April 2013 which was critical of the process in determining the Certificate the Council was advised that it should take independent professional advice about the options available and if the CLEUD could be revoked, consideration should be given to that option.

Process of Revocation

- 3.5 The procedure for revocation of a notice is given by Article 35(15-17) of the Town & Country Planning (Development Management Procedure) Order 2010.
 - This requires a notice to be given on the owner, occupier and any other person, in the opinion of the local authority, affected by revocation.
 - All those served with a notice must be given 14 days to make representations on the proposal to the local authority.
 - Final notice of any revocation must be given to those notified.

Potential for Revocation

- 3.6 The basis of a revocation is that a statement was made or a document used which was *“false in material particular, or any material information was withheld”* Therefore, the applicant may have felt that information or material was unnecessary but if it is material to the consideration of the decision then the Certificate is capable of being revoked as a result of it not being submitted.
- 3.7 It was considered that material put forward in support of the application left a number of unanswered questions. In asking these questions it is necessary to consider whether information about such questions would be available to the applicant, and therefore whether it was likely that material information was withheld

3.8 In this instance given the proximity of the quarry site and the confirmation that the area was used as parking for operatives and visitors it was considered that such information must be available particularly in relation to the operations and working of the quarry. It followed that there is likelihood that material information was withheld.

3.9 Letters were therefore sent to the applicant and other interested parties which stated:

Section 193 (7) (b) of The Town & Country Planning Act 1990 (as amended) advises that a Local Planning Authority may revoke a Certificate if it is considered that *material information is withheld*. This does not imply that such information has been intentionally withheld or submitted, it could be that it was simply not considered necessary to submit this at the time of submission.

The supporting information from the application confirmed that *“the site is used for the parking of operatives and visitors to White Moss Quarry”*. Given that the site is a working quarry it is considered that the following material information must be available and has therefore been withheld under the terms of Section 193 and provides sufficient scope to revoke the decision made.

Details about the opening and working operations of the quarry such as where people park on the site.

Details of operatives and visitors who have parked on the site for the quarry and as such there must be attendance records (as required under Health & Safety legislation) of such visitors and operatives.

Details and records of the ancillary equipment and machinery for the quarry that has been stored on the site.

Details of the hardstanding for the site being laid such as hard core deliveries and how the area is maintained.

3.10 The Council has received responses to the proposed revocation from local residents, Alsager Parish Council and agents on behalf of the applicant.

3.11 Given the representations received in response to the ‘proposed revocation’ letter and Members’ previous request to be kept updated on this matter Officers have referred this matter to SPB as it was felt appropriate for the final decision to revoke (or not) to be made by SPB. This report therefore details the representations and provides an assessment so that an informed decision can be made. It should be noted that further legal advice has been taken in preparing this assessment.

4.0 Comments received in response to the proposed revocation

Agents on behalf of the applicants

- 4.1 The applicant's agent has put together a detailed response to the specific questions asked which for avoidance of doubt is duplicated in full below. They firstly respond that they consider that the letter proposing to revoke is ambiguous and unclear. The first limb of Section 193 of the Act indicates "a statement was made or document used which was false in a material particular". Secondly, it is not known whether the material was intentionally withheld. Any decision of the Council maybe challenged and therefore the applicant's maintain that it is important for matters to be clear and that full opportunity is given to respond.
- 4.2 It is similarly not clear whether the revocation is based upon new information. If it is further consideration of the details submitted by the applicant and only those details then it is acknowledged that this is a legitimate basis for your reconsideration. The Ombudsman Report cannot substantiate the basis of the proposed revocation.
- 4.3 The applicant strongly refutes any assertion that may exist that he has intentionally withheld material information or that a statement or document presented or made at the time of the application was false.
- 4.4 While the applicants comment that it is not totally clear from the letter it appears that the substance of the proposed revocation is that material information has been withheld because it must have been available at the time. There is no indication or suggestion that the proposed revocation is on the basis that the application was deficient in terms of the area applied for or in any other respect other than the information you have now asked for. It is noted that the premise and basis on which the Council conclude that information has been withheld is that the site is a working quarry as the letter indicates. Full details of the respective responses to the Council's letter are listed below:

"Given that the site is working quarry it is considered that the following material information must be available and has therefore been withheld under the terms of Section 193 and provides sufficient scope to revoke the decision made."

- 4.5 The alleged withholding of information is indicated as being a consequence of the site being a working quarry. This is fundamentally incorrect and so the basis of the Council view that material information has been withheld is flawed and not supported by the facts. The revocation cannot proceed on this basis. The site of the Lawful Development Certificate is not and never has been a working quarry and is not part of any planning permission for the quarry. The adjacent quarry site is governed by specific planning permissions and a defined geographical area. The quarry planning permissions do not appear to extend to the site of the Lawful Development Certificate. The LDC

application and the certificate issued does not specifically relate to the adjacent quarry. The certificate issued is for the parking and storage of vehicles machinery and equipment some of which but not all has an association with the adjacent quarry. On the basis of the mistaken view that the site is a working quarry the letter then asks for information which it is stated must be available.

Details about the opening and working operations of the quarry such as where people park on the site

4.6 It is disingenuous of the Council to suggest that this information has been withheld. The information about the opening and working operations of the quarry requested is readily available and already in the possession of the Council. The Council are responsible for the planning permission of the adjacent quarry and have through planning conditions on the permissions set the opening times and working operations of the quarry. In respect of parking at the quarry site there are two spaces allocated behind the site office. Not only is this information already available to the Council but it has also been set and controlled by the Council. While it accepted that the onus of proof for an LDC is on the applicant and that the Council need not “go to great lengths to.....show that the use is or is not lawful” there is a clear requirement on the Council to cooperate with the applicant. There is a clear implication that the Council are required to go to some length to show that the use is either lawful or unlawful. For the Council not even to avail itself of information they have the responsibility to hold would indicate that the Council have not made any attempt to understand information they already have. Not to go to any length in respect of this falls well short of the responsibility of the Council and is unreasonable. To now suggest that this information has been withheld and is sufficient to revoke the issued certificate is in the context of government advice a serious misuse of the legislation at Section 193 of the Act and one which is unquestionably open to legal challenge.

4.7 Furthermore the Council have a specific responsibility at Section 35 (9) of the Town and Country Planning (Development Management Procedure) Order 2010 “to require the applicant to provide such further information as may be specified to enable them to deal with the application”. At no time during the consideration of the LDC did the Council make such a request. Indeed the committee report presented for a decision on the Lawful Development Certificate made it clear under the heading “Officer Appraisal” that “the information submitted is sufficient for it to be determined on the balance of the evidence submitted”. If the information submitted with the application was considered sufficient to make a decision it is entirely unreasonable for the Council to now suggest a revocation of the Certificate some 18 months later based in part on information they already hold and held at the time of the decision.

Details of operatives and visitors who have parked on the site for the quarry and as such there must be attendance records (as required under Health and Safety legislation) of such visitors and operatives.

4.7 It is incorrect to suggest that there must be attendance records under Health and Safety legislation. The site is not part of the quarry and forms no part of the planning permission for the quarry. The jurisdiction of the HSI is only in respect of the quarry and not any adjacent land that is not part of the quarry. For the purposes of the Health and Safety Inspectorate the quarry is defined in the "Quarry Document" in accordance with Regulation 7 of the Quarries Regulation 1999 and I do not consider that the land the subject of the LDC forms part of the quarry. Regulation 4 confirms the extent of the application of the regulations. I have spoken with the Health and Safety Inspectorate who, despite your assertion, have confirmed that there is no requirement to keep a record of the workers and operatives attendance at the site. Equally there is no legislative requirement for records to be kept of visitors to the site. The Quarry Regulations 1999 set out at Part VIII section 44 those records that are required to be kept, and there is no requirement to keep records of visitor attendance or where they park. It is incorrect to assert therefore that as this information must be available it has therefore been withheld.

4.8 However if you now require details of who has parked on this site then we can provide the following information: A record of those who have visited the site and who have then entered the working quarry is kept not as a matter of legislation but as a practice of the owner. I have attached a copy of the most recent visitors to the site.

Details and records of the ancillary equipment and machinery for the quarry that has been stored on the site.

4.9 While the application and certificate issued did not relate wholly to equipment and machinery for the quarry your additional request for information relates specifically to this and we can provide the following information to assist.

4.10 There has been no storage of ancillary equipment or machinery on the CLEUD site that relates to the quarry. There is a container on the site which from time to time has stored spares for machinery that is used in the quarry, but that is the only storage on this site that is linked to the quarry.

Details of the hardstanding for the site being laid such as hard core deliveries and how the area is maintained.

4.11 The hardstanding to the CLEUD site was delivered from Buxton and was in the form of approximately 80 tonnes of limestone crusher run. The limestone hardstanding was laid directly on the land after a limited scraping of topsoil. The hardstanding does not require any maintenance and has not been added to since the original placement.

4.12 The applicant's conclude that the proposed revocation of the CLEUD is flawed, and that the premise that information must have been withheld as the site is a quarry is incorrect. The site for the CLEUD does not appear to fall within the administration of the Quarry Regulations 1999. It is stated the information that it is now alleged has been withheld was

in part already held by the LPA and additionally could have been requested at the time of the determination of the CLEUD. They consider that the serious flaws in the approach are such that the intention would be to legally challenge any revocation.

Alsager Parish Council

4.13 Alsager Parish Council support the proposal to revoke.

Local Residents

4.14 Proposal is welcomed, as has been stated before the land in question has always been agricultural land and has only recently been used to park vehicles on. The offer of providing a sworn statement is made.

4.15 Support the proposal to revoke and uphold the supporting evidence that use had not been in place for period of 10 years.

4.16 Pleased that the application is due to be revoked. Residents are reliant on the Council's professional planners to ensure that this area is returned to its rightful status, namely and agricultural field.

4.17 Welcome the decision to revoke but has the applicant now been asked to give further details?

4.18 The owners of the site we believe have withheld information and that the Council's only option is to reverse the decision.

5.0 Assessment

5.1 The applicant's agent states that the Council's letter is ambiguous and unclear. However, the Council's letter to the applicant and other interested parties specifically advised that the Certificate was to be potentially revoked under Section 193 (7) (b) of the 1990 Act as it was considered that "**material information is withheld**". This was emphasised within the letter and clearly highlights the wording of the legislation. The letter went on to state "*This does not imply that such information has been intentionally withheld or submitted, it could be that it was simply not considered necessary to submit this at the time of submission*". Again, this sets out the approach being put forward and it is not considered to be ambiguous or unclear.

5.2 No new or additional information has been submitted in respect of the CLEUD. The Council is responding to the recommendation of the Ombudsman to review the options available. The approach is therefore considered to be appropriate.

5.3 The applicants consider that revocation cannot proceed as it is fundamentally flawed to consider the application site as a working quarry.

While it could be acknowledged that it is not part of the working quarry it clearly has a relationship to the quarry. This is confirmed by the applicants supporting submission on the original CLEUD application which stated that "*the site is used for the parking of operatives and visitors to White Moss Quarry*". Given this statement it is therefore not unreasonable (or flawed) to ask the subsequent questions in relation to how the site (an area of hardstanding) has been used by those who work on and visit the site. It is also stated that some of the vehicles, equipment and machinery has an association with the adjacent quarry.

- 5.4 The Council does have details of planning conditions for the site as indicated by the applicants including some details of parking on the site. However, the question asked about details as to where people park on the site in respect of the working operations of the site. Again this is based on the premise that the area of land the subject of the CLEUD is widely acknowledged by the previous submission as parking - hence why the question was asked.
- 5.5 Although it is unclear what information the Council has the responsibility to hold, just because the Council may have such information does not mean that information is not withheld by the applicant's.
- 5.6 The comments of the previous report are duly noted and it is a matter of fact that the original report and decision made was to grant the CLEUD for the site.
- 5.7 As the site is not part of the working quarry the applicants have confirmed with the HSE that there is no requirement to keep a record of attendance at the site or keep records of visitors to the site. It is therefore considered that to say that information must be available and withheld is incorrect. The applicants keep records of visitors to the site and who has entered the working quarry as a practice of the owner. Records of the most recent visitors to the site have been submitted which does show that records of visitors are kept.
- 5.8 The applicants do provide additional information in respect of ancillary machinery and equipment and advise that this is limited to machinery spares from a container on the site.
- 5.9 Some details of the hardstanding are also provided, although this is limited to comments in respect of deliveries of limestone from Buxton and that it requires no maintenance. Although there are no specified dates, it again shows that certain information is available.
- 5.10 Understandably the Parish Council and local residents support the revocation of the CLEUD as some do not feel that sufficient evidence has been produced over the 10 year period. The offer of a statement from one resident is noted but at this stage that is not something that could be considered as the basis for revocation is solely on information being withheld.

Conclusion

- 5.11 The main thrust of the applicant's contention against the revocation is in respect of the approach and that the site the subject of the CLEUD is not part of the working quarry and as such no information has been withheld
- 5.12 As indicated above, it is considered that the Council's approach is in accordance with the 1990 Act and the relevant Article 35 (15-17) of the Town & Country Planning (Development Management Procedure) Order 2010. Similarly it is also considered that the letter sent out to all parties is clear and not ambiguous. Therefore the approach is considered sound and able to stand up to challenge for the reasons indicated.
- 5.13 The comments raised on behalf of the applicant both in respect of the original submission and in response to the proposed revocation establish a relationship between the quarry and the CLEUD site – particularly in respect of parking of vehicles for visitors and operatives for the quarry. It is illogical to suggest that information on one area of land meant that there was no withholding of information on another area. It is clear that in describing the use or operations on one area of land, that information on another area of land may be highly material. For example, in establishing the use of land as a car park, information from an adjacent building dispensing parking tickets would be vital.
- 5.14 It is evident that the applicant's response to the proposed revocation does provide some information in respect of records of parking and certain details about the hardstanding.
- 5.15 As highlighted previously if information has been withheld it does not imply that such information has been intentionally withheld or submitted, it could be that it was simply not considered necessary to submit this at the time of submission. However, in the light of all of the above comments, representations received and the legislative framework it is considered that revocation of the CLEUD can proceed.
- 5.16 It should be noted that once a CLEUD is revoked then a further decision will have to be made following a re-assessment of all the information and evidence available.

6.0 Recommendation

- 6.1 That the Council proceed with the revocation of the Certificate of Existing Lawful Use (Reference 11/3759N) for the parking and storage of vehicles, machinery and equipment at White Moss Quarry (Triangular Field).

7.0 Financial Implications

- 7.1 External consultants/lawyers will have to be appointed with an additional cost to re-assess the Certificate after revocation is formalised.

8.0 Legal Implications

- 8.1 The certificate was lawfully granted by the Council under s191 of the Town and Country Planning Act 1990 (as amended). Under s193(7) of the Act a Local Planning Authority may revoke a certificate if on the application for the certificate a statement was made or document used which was false in a material particular or any material information was withheld.
- 8.2 The procedure for revocation is set out in article 35(15) of the Town and Country Planning (Development Management Procedure) Order 2010. This requires prior notice to be given to the owner, occupier and any other person who will in the Local Planning Authorities opinion be affected by revocation. Article 35(16) requires the notice to invite the affected parties who have been served with the notice to make representations on the proposal to the Authority within 14 days of service and the Authority cannot revoke the certificate until the period for making representations has expired. Article 35(17) requires the Authority to give written notice of revocation to every person on whom notice of the proposed revocation was served under article 35(15).
- 8.3 The basis of potential revocation is that a statement was made or document used which was false in a material particular; or that any material information was withheld. It should be noted that under the second limb there does not need to be an intent to deceive. What is required is that material information was withheld. It can be withheld for any reason and this could as simple as not considering it necessary or relevant.
- 8.4 The process of revocation followed by the Local Planning Authority would be in accordance with the relevant legislation. There remains a risk of legal challenge however appropriate advice has been taken throughout in respect of the correct procedures and soundness of approach being undertaken.

9.0 Risk Assessment

- 9.1 There are limited risks to the revocation process as there is no direct appeal against revocation albeit a legal challenge to the decision could be possible.

10.0 Reasons for Recommendation

- 10.1 To consider all the comments raised and approve the proposed revocation in accordance with the detailed report.

For further information:

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Background Documents:

Responses to proposed revocation

APPENDIX 1