

26 July 2005

FIRST CLASS

- Mrs D Johnson
6 Hopwood Avenue
Horwich
BOLTON
BL6 7HA



The Commission for
Local Administration in England

Patricia Thomas
Local Government Ombudsman

Michael King
Deputy Ombudsman

Our Ref: 03/C/18455/PAT2/CMH

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C.L.A E YOR

17 AUG 2005

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Dear Mrs Johnson

Thank you for your letter of 7 July which I have read carefully. I recognise that you remain dissatisfied with the way in which the Council monitors and controls activities on and around the site.

As you know Ms Hunt's provisional view on your complaint against Bolton Metropolitan Borough Council was that there was no evidence of significant maladministration on the part of the Council with respect to the matters about which you complain. Following further information from the Council which has already been sent to you and your reply, I have considered your complaint and I am satisfied that this is not a complaint that I should pursue further.

You complain that the Council has failed to monitor and control the activities of and development at Santime Quarry, Horwich.

The quarry has been in existence for many years (since before 1950). It is located very close to the farm you own with your ex husband and shares a boundary with the farm land. I understand that you no longer live with your husband, having separated several years ago. However, the farm is still jointly owned and you say it is your intention to return once the issue of the division of the property has been resolved. Although you have raised concerns with the Council in the past, as I understand it, your current complaints about the quarry started around the time you began to consider how best to deal with the division of the matrimonial home. At that time you sought advice from the Council about the correct location of Footpath 54 which was wrongly located on a

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copy of a Land Registry plan you had obtained. Since that time you have made numerous complaints to the Council about various matters relating to the operation of the quarry and the variation of planning consent. You told Ms Hunt when you met that your main concerns were the footpaths around the site and the matter of the quarry's wheelwash facilities.

As I understand it, the quarry currently has planning consent to continue extraction operations until 2007, with a further period to restore the site.

Variation of Planning Consent

In 2002 the Council received an application from the quarry operators to vary condition 23 of the existing planning consent. This was to enable the quarry to import materials in order to buttress one of the quarry faces which was considered to be in an unstable and dangerous condition. There is no evidence that the Council failed to publicise this application and the planning officer's report, prepared at the time, sets out clearly the extent and nature of the representations received including specific mention of concerns about the impact on your farm. The report indicates that under the previous planning consents for the site, including the Review of Mineral Working Permission of October 1999, there was no restriction on the number of vehicles that could enter and leave the quarry. In granting planning consent for the variation of condition 23 the Council took the opportunity to impose, or re-impose, a number of conditions on the quarry including a condition that the number of HGV vehicle movements into the site should be limited to 450 per week. There is no evidence the Council acted improperly in determining the application. It was for the Council to decide whether to impose further, or reinforce existing, conditions when considering the application and this it did. *

The Council specifically considered the matter of an environmental impact assessment when considering the application and, following legal advice, concluded that given the type of application it did not require an assessment.

Councils are entitled to make such decisions. The Local Government Act 1974 says that I may not question the merits of Council decisions if they have been taken without maladministration which is the case here.

Footpaths

It is clear that Footpath 53 (north west of the site) had to be formally diverted as it became unsafe due to the workings of the quarry. This was dealt with some years ago and does not directly affect you.

The evidence from the Council's files indicate that Footpath 54, which runs along the boundary with your land, has been compromised for many years and that the part to the north of Lodge Farm has not been navigable since at least the early 1990s. Discussion

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about the possible diversion of this footpath has been ongoing for many years without any final agreement between you, the quarry and the Council. The Council says that the quarry is acting within its legal rights to use vehicles on the footpath where it is on land within its ownership. I would not be critical of the Council for not asking the quarry to remove the lock on the gate as there are health and safety issues which it would have to take into account. If this means that walkers from time to time trespass onto your land this is unfortunate but does not constitute maladministration. The Council acknowledges that the state of the footpath compromises its use and for this reason it has not sought the removal of the notice (which it says it did not erect) stating that the path is closed.

The Council has continued to try to resolve the matter by pursuing the possibility of a diversion of the footpath with both the quarry and you and your husband as owners of the neighbouring land. You have told me that you are willing to agree to the temporary diversion of the footpath pending the reinstatement of the footpath once the quarry's current planning consent expires. I gather that the quarry has so far not agreed to your preferred proposed line of diversion. The Council says that it intends to re-open negotiations with Santime Ltd in order to pursue a legal diversion of the line of Footpath 54. The Council says that it has already sought and obtained the views of footpath user groups regarding this matter. If you continue to disagree about relocating all or part of the line of the footpath across your land I can see no end to this problem.

Further work to try to resolve this issue is to be undertaken now that additional resources have been committed by the Council to its Rights of Way Department. The Council says that it remains committed to trying to find a solution to the problem but it is not practicable to prosecute for the destruction of the official line of the footpath given the passage of time and change of ownership since a section of the path was destroyed.

The Council says that its recent inspections of Footpath 55 show that it is both safe and accessible for the general public. The protection of your live stock is for you to address and there is nothing to prevent you from erecting fences or other forms of containment on your land to achieve this end whether or not you feel the quarry should undertake work to its fences.

The Council says that it has no evidence, including no concerns expressed by the Greater Manchester Geological Unit which regularly monitors the site for the Council, that the standoffs to the highways around the perimeter of the site are being breached or that the quarry is working outside its consented area.

The application to vary Condition 23 of the planning consent was for the importation of materials and not for any specific works relating to any roads or public rights of way.

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Wheel wash facilities and mud and detritus on the roads

Originally the quarry had one facility for wheel-washing located within the quarry site itself.

In 2003 the Council says that it began to receive a significant number of complaints about mud and detritus on the local roads leading to and from the quarry site. This was causing problems for traffic, the highways drainage system and a local reservoir. The Council says that the various relevant Departments and Agencies coordinated their activities with a view to addressing the problem in a strategic way. It says that it was as a result of this coordination that progress was made on the installation of an additional wheel wash facility and a request made to the quarry for the submission of a formal application to the Environment Agency for consent to discharge. That application has since been progressed and approved.

As a result of negotiation by the Council, the quarry agreed to improve its wheel wash facilities it did so by constructing a wheel-wash toward the entrance to the site. The Council says that it is satisfied that the facility is within the perimeter of the operational area of the existing planning permission. I note that you disagree with the Council over this matter. However the Council remains of the view that the location more adequately deals with requirements of the planning condition aimed at wheel cleaning provision and any minor element of the fixture which may straddle the boundary of the operational site of the quarry is not significant enough to warrant taking enforcement action. Whilst the 1968 planning consent makes reference to no "quarrying" within 100 yards of any dwelling there is nothing to indicate any distance restriction on other development close to Lodge Farm. I have seen nothing to suggest that the Council could or should take any action against the quarry with respect to the location of the new wheelwash. Its installation was intended to address the very problem you had complained about.

If, as you suggest, the new facility is located on land within your ownership then this is a private civil matter between you and the quarry and it would not affect my conclusion that the Council has good reason for concluding that there are no legitimate planning grounds for taking enforcement action to have the facility relocated.

The wheel-wash came into operation around March 2004. The Council says that initially the facility led to an improvement in the state of the adjacent roads. However in December 2004 problems with mud on the road again arose. The Council says that it considered taking enforcement action regarding the state of the highway. However it says recent inspections show that the quarry has installed a dry rumble strip to supplement the wheelwash and the roads were being swept twice a day. I note from the information you have submitted that you acknowledge that the roads are being swept although not at a level you consider to be sufficient to address the problem. At this moment in time the Council says that it has no grounds for taking enforcement action.

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Water discharge

Following concerns about water discharge from the site and the impact on the highway drains and a local reservoir, the quarry was asked to seek and obtain formal consent from the Environment Agency to discharge into the public drainage system. This it did and responsibility for monitoring water quality, pumping operations and the manner in which water is discharged into the drainage system therefore rests with the Environment Agency. The Council says that it understands that the pipe laid alongside Makinson Lane, which you say is leaking, is part of the system approved by the Environment Agency. It would therefore appear that if you have concerns or complaints about the pipe you should address these to the Environment Agency in the first instance.

Flytipping

The Council says that flytipping is a general problem which affects the whole area. There is nothing to suggest that the quarry itself is directly responsible for the problems of flytipping in the area.

Other breaches of planning control

The site has been regularly monitored on the Council's behalf by the Greater Manchester Geological Unit; part of its remit was to check the operation of the quarry against the conditions imposed by planning consent. To date no specific concerns about any breaches of planning control have been raised by the Unit. The Council has also been actively involved in addressing complaints and allegations of breaches of planning control as they arise. It says that operations do not appear to be taking place with any significant departure from the relevant planning permission although where breaches have been identified these have been raised with the quarry and action taken.

It is evident that the quarry failed to comply with conditions of its 1999 planning consent to submit details of various schemes for the approval of the Council. However, this issue was addressed when a further planning application was submitted in April 2002 to vary one of the conditions (No.23) relating to the importation of material to enable an unstable quarry face to be shored up. As I understand it, the matter has now been addressed and the relevant conditions complied with. The Council has undertaken a number of inspections and investigations as a consequence of complaints made by you, but has to date been unable to establish that the quarry is routinely flouting the conditions set by the current planning consent.

I do not doubt that the quarry operates in a way which impacts adversely on your property and former home. I also do not doubt that the quarry is willing to push the limits of its planning consent as far as possible to the extent that breaches may well occur from time to time. However, your farm house is located so close to the quarry that it could not possibly avoid being adversely affected by the quarry operations no

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matter how well run the quarry might be. Many of your concerns about the actions of the quarry relate to private civil matters between you and the quarry owners over which the Council has no control or responsibility. It is also the case that the state of Lodge Farm and the fact that a large number of derelict vehicles appeared to be stored on the farm has itself attracted the criticism of the Council.

The evidence suggests that, over time, the Council has endeavoured to take action to control activities on the site, to require the quarry to operate within the parameters of its planning consent and to introduce facilities and procedures to address serious concerns about the impact of the quarry operations on surrounding properties and infrastructure. The Ombudsman would expect the Council to continue to monitor closely the activities of the quarry to ensure that as far as reasonably practicable it does not breach the terms of its planning consent.

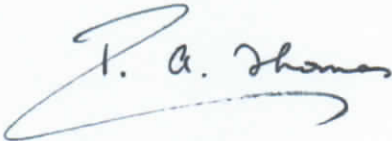
The evidence I have seen satisfies me that there has been no significant maladministration by the Council in relation to the matters you complain about.

For this reason, I will now discontinue my investigation.

The 1974 Act requires me to inform the Council of the decision on your complaint. I have therefore sent a copy of this letter to the Council's Chief Executive.

I am returning your file of papers to you.

Yours sincerely

A handwritten signature in cursive script that reads "P. A. Thomas". The signature is written in dark ink and is positioned above the typed name.

Mrs P A Thomas

Enc: your documents