

DEVELOPMENT CONTROL

Authority to enforce or prosecute
which rules applicable
S.C. 13.6.1987.

MEMO FROM AREA PLANNING OFFICER TO PRINCIPAL PLANNER

APPLICATION NO. 87/6/019/4.	RECOMMENDATION B.
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TECHNICAL REPORT:

This is an application made under the provisions of S.94 of the TPA, seeking a determination that "the winning and working of saw block stone" from the identified site is the established use of this land.

S94 allows the LPA, if they are satisfied with the claim - to grant the application, or if not, refuse. There is a right of appeal against this decision to the SQS.

The site is an area of apparent quarry land on the high moorland between Cringus and Brom Bank. It is the watershed between the area and Wharfe, and comprises, generally of rough grazing land.

Whilst the applicants claim that there is a long history to the site, there is a dearth of planning records. From 1947 to 1983, the only records are a permission for a shooting range, and a refusal as a type dump.

In 1983, app.

1983 - use of land for extraction of blockstone

- 11th Jan 1984 - BMDP used to support the applic.
13.3.84 WYMEC REFUSED.

1984 - similar applic

- 6. June 1984 - used to app. -
WYMEC REFUSED

1986 - two applications for extraction of roadstone for ATR - REFUSED.

More significantly, in 1983, an application for an established use certificate was made, in similar terms, "for the mining, working of blockstone" on a larger site, but including the present site. The County Council considered that, at that time, there was insufficient evidence to allow a certificate to be issued.

The present application differs from this in two material ways.

Firstly it is a reduced site. Now including the physical extent of the obvious quarry workings, but still showing a substantial area of unworked hillside on the east of that quarry. Also some additional information is also supplied.

This includes

- ① Rating records: This details abstracts from historic records from 1914 where the evidence of a quarry use is shown; and rate book extracts from 1924 to 1957 - although these are a little less than complete.
- ② More details of a sale of the Selsdon Estate of 1947 which identified a quarry, and an extract from the sale map which shows this to be from 1909, but not the same area as is now included in this present application.
- ③ - ⑥ This is the same evidence of affidavits & published sources which was submitted previously to WYMC.



- ① An extract from a BRP publication of 1986 which lists Thom Craig as a sandstone used for buildings
- ② Another list of ^{local} buildings where Thom Craig stone has been used. These date from the turn of the century, Selkirk Library to Jacques Groue Selkirk ? 1950/60's.

These may show that stone has been taken from the quarry, but do not show that the extraction was 'lawful' following the 1947 Act, or that it has been established since 1964.

The evidence submitted does not, however, enlighten upon the one point which is material & conclusive. In 1947, all active quarries were required to be registered. This registration certificate has not been produced. The applicants submit that, because stone was extracted after 1949, then the quarry must have been registered. WJMC rebutted this by saying that a total search of all applications for registration did not reveal any application in respect of Thom Craig. The applicants argue, therefore, that the public records are therefore wrong.

Whatever the merits of these arguments, there remains one flaw in the application, which cannot be overcome.

The guidance on relation to s 94 of the Act, in the ~~examples~~ advises LPA's that "a certificate does not (or unlawful) use lawful". And further, specifically states that "a certificate may not be granted in respect of a use which --- (is) in breach of an effective enforcement notice"

WYMA have issued two enforcement notices and one stop notice in respect of the quarry use. One appeal against the enforcement notice was withdrawn by the applicants, and thus, we are advised, that the notice remains 'effective'. We cannot, therefore issue the certificate requested.

This, however, is not the end of the matter. Three further questions need answering in order that the matter can be resumed

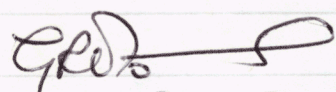
① Is there any lawful use of the land for extracting stone?

It is obviously a quarry, and there is intermittent evidence of its use from the last century.

As we cannot issue a s 94 notice, there would not seem to be much future in proceeding along this path - or by giving a determination under s 53 that P.P. was not required to extract stone from the existing quarry. There is also the legal pitfall that 'each bucketful of stone extracted is regarded as development'.

(2) In view of the two previous resolutions of the Council, on 1983 #4 to recommend to WYMEC that permission should be granted to extract blockstone, subject to safeguards on traffic, water supply, land use, level of use and subsequent restoration, should we advise that a new application on these terms be now submitted.

(3) If the answer to this question is No, then we need to consider the re issue of the enforcement notices. Not because they are 'ineffective', as they clearly relate to this land and this use, but because the company upon who they were issued has been wound up. This application gives details of the new company who claim rights to the land, and although the 2 principals of the company are the same as before it would a, allow the Council to proceed against the "new" owners, and b, allow the "new" owners a right of appeal into this somewhat contentious matter.


4. 5. 87.

