

1. Competency: Three Client Relations	Learning Outcome: 3.3 (c) Provide clear legal advice to clients or service users
2. Evidence provided: 1. Email to Client Department 2. Supporting note with advice	
3. Outline how the evidence demonstrates you meet the outcome Advice, options and next steps: Advice was needed on the revocation of mineral planning permissions. The client was seeking to revoke two dormant/inactive permissions and wanted to know the procedure in doing so and what the consequences of doing so were. I advised the client as to the position of the LA in regard to the Law and also what steps we needed to take. Legal Advice Provided: I set out to the client that we needed to ensure that buildings or operations had not already been completed or a change of use occurred. I advised that this was relevant as we would not otherwise be able to revoke the dormant permission. I also advised that we would need to obtain confirmation from the Environment Agency that they would not object.	
4. Reflection and Evaluation Clients rely on the legal advice provided to them, so it is essential that the legal advice provided is accurate and complete to enable them to make a decision.	
5. Completion date: 17 November 2011	
6. Signed (Applicant)	Date: 17.10.13
7. Signed (Supervisor)	Date: 18.10.13

RE Minerals stuff.txt

From: [REDACTED]
 Sent: [REDACTED] 6:40
 To: [REDACTED]
 Subject: RE: Minerals stuff

Hi [REDACTED]

Please see attached my notes on this matter.

Having looked at the Minerals Planning Guidance 4 and the relevant pieces of legislation I have made the following summary.

Firstly we need to ensure that buildings or operations have not already been completed or a change of use has occurred, otherwise we are unable to revoke the permission, and would have to look at a Discontinuance Order instead.

Provided buildings or operations have not already been completed then we need to look at Section 99(7) of the TCPA 1990. This allows for an expedient procedure where all those who received Notice of the Order have informed the [REDACTED] that they do not wish to object to it.

In these cases a Section 97 Order (Revocation/Modification Order) may take effect without being confirmed by the [REDACTED] provided the [REDACTED] have satisfied the following:

- a. advertised the making of the Order;
- b. sent a copy of it to the [REDACTED] not more than 3 days after it was published;
- c. the SOS has not directed that the order be submitted to him for confirmation or;
- e. received notice that a person affected by the Order wishes to object.

It seems to me that we would need to obtain confirmation from the [REDACTED] and [REDACTED] and any other person who is affected by the Order that they do not object to the Order being made (I assume we could receive this by letter). We can then proceed as above.

However as I have noted in the attached, the provisions of Section 99 (7) above do not apply where an Order has been submitted to the [REDACTED] for confirmation where the Order revokes/modifies planning permission granted or deemed granted by the [REDACTED] or where an Order modifies conditions imposed by virtue of Sections 91 or 92 of the Act.

I hope this makes sense.

Happy to discuss it with you before Friday's meeting.

-----Original Message-----

From: [REDACTED]
 Sent: [REDACTED]
 To: [REDACTED]
 Subject: FW: Minerals stuff

Hi

Please see below. Could one of you (don't mind which!) research this query before Friday so that we can discuss with [REDACTED]

RE Minerals stuff.txt

Thanks

Senior Solicitor
Legal and Democratic Services

-----Original Message-----

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: Minerals stuff

Hi [REDACTED]

We have a meeting next Friday re odd bits but I was wondering whether we could also include, at the end, something on the revocation of mineral permissions. We may well have to follow it up after but we are seeking to revoke two dormant/'inactive' permissions at [REDACTED] Harbour (there's a very long history...) but these particular ones could be straightforward, as one appears to be in the control of the EA (which has said it no longer needs the permission - although there may be another ownership issue here which needs ironing out) and one is in the control of the [REDACTED] Wildlife Trust (although it appears that there is another body which owns the mining rights - again, we are seeking to find out more about this). The main issue is whether we can, all other things being OK, seek revocation by letter. MPG4, para 23, appears to encourage 'informal' resolution rather than the formal route via the Sec of State.

There's also another issue...

I may give you a quick call first...!

[REDACTED]
Principal Planner (Development Control)
Transport & Environment
[REDACTED]

Revoking Planning Permission - The legal position

Planning permission vests development rights in the land, and the local planning authority (LPA) has no power simply to withdraw a permission unilaterally.¹

Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation.²

The LPA has the power to revoke planning permissions under section 97 of the *Town and Country Planning Act 1990* (as amended). The wording of the section suggests considerable freedom for the LPA, but in practice strictly constrained.³

- (1) If it appears to the LPA that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.
- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section may be exercised -
 - (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
 - (b) where the permission relates to a change of the use of any land, at any time before the change has taken place.
- (4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.
- (5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the minerals planning authority.
- (6) Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development -
 - (a) consisting of the winning and working of minerals; and
 - (b) involving the depositing of refuse or waste materials.

For opposed cases, s.98 (1) states that **"an order under section 97 shall not take effect unless it is confirmed by the Secretary of State"**.

There is a liability to pay compensation, under s.107 of the Act, in respect of expenditure rendered abortive by the order and for any other loss or damage directly attributable to the revocation or modification.

¹ <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snsc-00905.pdf>

² <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snsc-00905.pdf>

³ <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snsc-00905.pdf>

The power in s.97 can only be used **before the development is complete**.

After that date, a local planning authority can use a power to order **Discontinuance under s.102 of the Act**. **S.102 (1)** gives the main power:

If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)-

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
 - (b) that any buildings or works should be altered or removed,
they may by order-
 - (i) require the discontinuance of that use, or
 - (ii) impose such conditions as may be specified in the order on the continuance of it, or
 - (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,
- as the case may be.

Note:

Confirmation by the Secretary of State is required **under s.103**.

Again, there is a liability to pay compensation under s.115.

The normal measure of compensation is the damage suffered in consequence of the order by depreciation of the value of an interest in the land or in minerals, or by being disturbed in the enjoyment of the land or minerals; and any person who carries out any works in compliance with the order is entitled to recover from the local planning authority any expenses incurred by him.⁴

⁴ <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snsc-00905.pdf>