



██████████
Ward Hadaway
Sandgate House
102 Quayside
Newcastle upon Tyne
NE1 3DX

Your Ref:

Our Ref:

2016239-8

Please quote this when replying

Date:

26 May 2021

Please ask for:

Ext:

Direct Dial:

E-mail:

Direct Fax:



Dear ██████████

High Close Quarry

Application 2/19/9010 - Review of Old Mineral Permissions (ROMP) application

pursuant to Schedule 13 Environment Act 1995

Application 2/19/9011 – New Vehicular Access to Quarry

We are instructed on behalf of Cumbria County Council ('CCC') with respect to your letter dated 26 February 2021 in relation to the above application. We note the concerns raised in your letter and would like to respond with the points raised in turn.

Planning permission CA49

Planning permission was granted on 8 December 1954 under reference CA49 for *'the continued working of High Close Quarry'* (the '**1954 Permission**'). Your letter raises the following points in relation to this permission:

- 1. The High Close Quarry site has not seen mineral working since 1956. The conclusion to be drawn is that the site has been vacated. Operations have been concluded and the 1954 Permission is expired and spent;**

The evidence for this point has largely been drawn from a CCC inspection record dated 15 December 1958 which your letter refers to. This states (amongst other things) that:

- a) the site was not active and that west face has been attempted on two lifts and abandoned, presumably as being uneconomic; and
- b) Condition 7 of the 1954 Permission requires clearing of plant and building material at conclusion of operations. Some plant was dismantled, but this condition needs enforcing.

75618054-1



CCC and Thomas Armstrong (Holdings) Limited have been in correspondence from 1996 acknowledging that there was an intention to re-open and work the dormant quarry at a future date. Furthermore, the 1958 inspection record discussed above notes that the quarry has not been fully worked.

It was established in the Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment case that provided planning permission is still capable of being implemented, it is not taken to be abandoned in spite of suspension. This is further clarified in the Durham CC v Secretary of State for the Environment case where an intervening use of the land (in this case also for tipping) did not mean that the operational development (mining) could no longer be implemented.

CCC do not consider that your interpretation of the 1958 inspection record can offer sufficient evidence that the 1954 Permission has been expired and spent. On the basis that the quarry is dormant and operations have not concluded, there would be no need to consider enforcing condition 7 of the 1954 Permission.

2. The listing stage under the provisions of Environment Act 1995 is a two stage process. The ROMP process cannot revitalise a spent permission;

Whilst the first stage of the listing process may be administrative, we do not understand the relevance. High Close Quarry can be worked lawfully in accordance with the 1954 Permission. As above, CCC's position is that the 1954 Permission is not 'spent'.

3. The area edged green under the 1954 Permission has concluded and is spent. If the ROMP application seeks operations in this area then this is unlawful.

CCC is of the view that only part of the area edged green under the 1954 Permission has been worked. This is evidenced by the current proposal which includes a significant part of the area edged green for continued mineral workings.

Planning permission 02/76/0357

Planning permission was granted on 30 July 1976 under reference 02/76/0357 for tipping of domestic, trade and non-toxic industrial refuse (the '1976 Permission'). The development granted under the 1976 permission overlaps part of the development site granted under the 1954 Permission.

Your letter raises the following points in relation to the 1976 Permission:

1. Condition 7 of the 1976 Permission requires for the site to be restored for agricultural use after tipping has completed. CCC visited site in 1993 and the monitoring record stated that Landfill was completed in 1991, the standard of restoration was difficult to judge, and there was evidence of subsidence. You have requested clarification as to whether condition 7 has been complied with and what steps have been taken to remedy the subsidence raised;

The monitoring record from 1993 referred to above also states that the land has been restored to agriculture and that little further can be required under the planning permission. Even if this were not the case, the time period within which enforcement action could have been taken has long since expired.

- 2. The 1954 Permission is incompatible with the 1976 Permission on the basis of a fundamental alteration of the site so that working (or continued working of) the site under the 1954 Permission is no longer possible. You have referred to the Pilkington case as authority that two permissions cannot stand in respect of the same land, where development approved by second planning permission has been carried out;**

The above interpretation of the Pilkington case does not take into account that two permissions are only incompatible where those two permissions are mutually inconsistent. It is necessary therefore to consider whether the two permissions are capable of co-existence. In the Durham CC v Secretary of State for the Environment case as explained above, the mining permission was still capable of implementation on the same site despite it being used for tipping under a subsequent permission. For High Close Quarry, CCC do not consider there is any basis on which to suggest that mining operations cannot continue under the 1954 Permission.

- 3. The access road permitted under the 1976 Permission severs the site granted under the 1954 Permission which did not entail the use of that road;**

CCC fails to see how the existence of the road renders the 1954 Permission as incapable of continued implementation (taking into account the Pilkington case as discussed above). The expectation is that an application will be submitted for an alternative access in any event.

- 4. The 1954 permission did not contain a high pressure gas pipeline across quarry site. Laying of pipe fundamentally altered the site so that development in 1954 permission cannot be carried out.**

CCC is of the view that the pipeline has not fundamentally altered the site to the extent that the 1954 Permission can no longer be carried out. CCC have been informed by the applicant's agent that the pipeline is subject to a wayleave which requires its removal prior to mineral extraction or the payment of appropriate compensation.

Part II A Environmental Protection Act 1990

Your letter has queried:

- 1. whether CCC intends to impose conditions requiring clean up from any potential contamination from the landfill site;**

Part IIA of the Environmental Protection Act 1990 will not be applied in this case as all contamination issues associated with the old landfill will be considered as part of the current planning application for High Close Quarry. This will mean that the applicant will need to demonstrate to the satisfaction of the Minerals Planning Authority that the development proposal will not impact on human health, groundwaters or the wider

[REDACTED]
26 May 2021



environment and ensure all contamination issues associated with the 1976 Permission are appropriately addressed in the current submission.

2. what discussions CCC have had with the district council in regard for remediation of the landfill site and who is liable

CCC's planning case officer is taking a development team approach with the application which means they are in regular contact with Allerdale Borough Council, the Environment Agency and other relevant consultees in order to ensure that the application complies with all current UK environmental standards which did not exist when the 1976 Permission was granted. As you will be aware, where a planning application relates to a site affected by contamination, responsibility for ensuring a safe development rests with the developer and/or the landowner and not the original polluter.

In view of the fact that CCC are awaiting the submission of a revised environmental statement, it would be premature to advise precisely the nature of any conditions or remediation that may be required for this site.

Yours sincerely

[REDACTED]

[REDACTED]
Director
for DWF Law LLP