Environment Act 1995 Schedule 13

Review of Mineral Permissions Appeal

High Close Quarry, High Close Farm,

Plumbland, Aspatria, Wigton CA7 2HF

Application Ref 2/19/9010

Appeal by Thomas Armstrong (Aggregates) Ltd

APP/ROMP/24/3

Plumbland Parish Council

Submission to Secretary of State

24 October 2024

1. Introduction

1.1. This is a submission on behalf of Plumbland Parish Council (the Parish Council).

1.2. The Parish Council is a local authority for the civil parish of Plumbland as identified on the attached plan (WH E1).

1.3. This submission is set out as follows:

- Background
- Request for prior determination of legal issues
- The ROMP Schema
- Invalid application - Relevant planning permission
- Invalid application – Identity of Applicant / Appellant
- Invalid application – Other requirements
- No Right of Appeal
- Access
- Further comments on Stephenson Halliday submissions
- Proposed new conditions
- Other submissions

2. Background

2.1. A ROMP application (the Application) was submitted on 6 September 2019 by Stephenson Halliday (SH) on behalf of Thomas Armstrong Limited (the Applicant). The application form is attached at appendix WH C1.

2.2. A ROMP appeal (the Appeal) has been submitted on 28 June 2024 by SH on behalf of Thomas Armstrong Aggregates Limited (the Appellant).

2.3. Where the context requires this submission distinguishes between the Applicant and the Appellant. Strictly without prejudice to any issue turning upon such distinction, the submission otherwise refers in the interests of simplicity to "Thomas Armstrong".

2.4. Cumbria County Council and its successor body Cumberland Council comprise the Mineral Planning Authority (MPA).

2.5. There has been extensive correspondence with the MPA by and on behalf of Plumbland Parish Council. It is referred to selectively herein for present purposes. We expressly reserve the right to adduce further correspondence and other documentation. Moreover, in any event, the Applicant/Appellant's agent and solicitors have been copied into key letters and are well aware of the Parish Council's position.

2.6. The ROMP application was misconceived from the outset. That the Appellant's agent now seeks to lay the blame for that at the door of the MPA is telling. The Application

was iteratively advanced on several wholly incorrect assumptions – both by the Applicant and MPA – including the assumption that compensation would be payable for onerous/adverse conditions; that an environmental impact assessment could be bypassed by the use of private covenants; and that an "in principle" permission constitutes a relevant planning permission.

2.7. In addition, there is no acceptable access to the site and the applicant does not have control of the land proposed as an access. Two planning applications for an access have been submitted. Both have been withdrawn.

2.8. In brief terms the factual background may be summarised as follows.

2.8.1. A hybrid planning permission CA49 dated 8 December 1954 (WH A1) granted planning permission for continued working of High Close Quarry (the Permission).

2.8.2. The Permission comprised two elements:

2.8.2.1. detailed consent for an area delineated in green which had already been worked (the Green Area); and

2.8.2.2. “In principle” consent subject to a condition requiring approval of details for a wider blue area (the Blue Area).

2.8.3. The Green Area and Blue Area respectively are identified on a plan attached to the Permission (WH A2).

2.8.4. Working of the quarry in the Green Area ceased around 1956 as noted in the MPA's note of site inspection dated 15 December 1958 (WH A3).

2.8.5. In 1976 Cumbria County Council granted its own application for consent to tip waste into the Green Area void at High Close Quarry ("the Landfill Permission"). The Landfill Permission comprised *"controlled tipping of domestic, trade and non-toxic industrial refuse in disused quarry land and restoration of land to agricultural use"* (WH A4).

2.8.6. The quarry was also described in the relevant committee report as "a disused limestone quarry" and the Landfill Permission granted described as being for *"restoration of the disused quarry to productive agricultural use"* (WH A4).

2.8.7. Drawing No E 108.33/05/1/Am0 showing the consented landfill area is attached at WH A5 .

2.8.8. The Landfill Permission was implemented. A wide range of waste was deposited. This included inert waste, waste from construction/demolition/building, household waste, and commercial waste.

2.8.9. The landfill was completed in 1991 and the land restored to agriculture. Details of the landfill use are set out in appendices WH A4 and WH A10 – A19 inclusive.

2.8.10. The Environment Act 1995 (the 1995 Act) introduced statutory provisions relating to review of old mineral planning permissions, i.e., ROMPs. The 1995 Act applies to "minerals development".

2.8.11. "Minerals development" means "development consisting of the winning and working of minerals, or involving the depositing of mineral waste"[1] (WH D1).

2.8.12. The process comprises two stages: Stage 1, the Listing stage; and Stage 2, provision for application for new, modern conditions to enable minerals working to take place.

2.8.13. The Listing process required identification of "a mineral site" which in turn was dependent upon identification of a relevant planning permission, i.e., extant mineral permission granted after 30 June 1948.

2.8.14. In undertaking its initial Listing the MPA included High Close Quarry as a dormant site on the basis of the Permission being for "continued working of Limestone Quarry" (WH C3).

2.8.15. The site was listed as a dormant site notwithstanding, as subsequently noted by [redacted] of the MPA, that *"the green permitted working area of the site had been worked out, restored and at some point subsequently built on in part for agricultural purposes…"* (WH A9).

2.8.16. And, in any event, the Permission does not contain any detailed permission in any respect for the "winning" of minerals.

2.8.17. Over the years there were occasional enquiries made of the MPA as to the status of the Permission. The various responses focused on the Blue Area rather than the Green Area. It appears to have been widely assumed and accepted within the MPA that the Green Area was spent.

2.8.18. The Appellant purchased the site in August 2016.

2.8.19. The Appellant sold off High Close Farm in May 2019 to [redacted]

2.8.20. The Applicant submitted the Application on 6 September 2019.

2.8.21. It gave rise to considerable local concern and the Parish Council has taken the lead in scrutinising and commenting on it.

2.8.22. Most particularly the Parish Council was concerned at the legal basis upon which the Application was proceeding and made a number of representations to the MPA both on its own behalf, via its Working Group and via solicitors, Ward Hadaway LLP (WH).

2.8.23. In particular the Application has been advanced on a number of misconceptions and misunderstanding of the ROMP regime and environmental law.

2.8.24. SH had clearly previously advised Thomas Armstrong that compensation was payable in the event of adverse economically onerous conditions. This is incorrect.

2.8.25. SH also sought to argue that the terms of a covenant entered into by the new owners of High Close Farm were relevant to the consideration of

[1] Section 96 (6) Environment Act 1995

environmental impacts from the proposed working of the quarry. This is also incorrect.

2.8.26. Leading Counsel's opinion obtained by the Parish Council and provided to the MPA sets out the correct approach.

2.8.27. Issues relating to the presence of a high-pressure gas main across the Blue Area also remain outstanding and have not been addressed.

2.8.28. The Parish Council has set out its concerns in detail in correspondence with the MPA.

2.8.29. On behalf of the Parish Council Ward Hadaway has written to the MPA setting out the reasons why the Application is invalid and incapable of lawful determination. These are reiterated below.

2.8.30. Attention is particularly drawn to the decision in Lafarge[2] (WH D6) which held that an in principle or outline consent does not constitute a relevant planning permission for ROMP purposes and therefore that no relevant planning permission can exist for the Blue Area.

2.8.31. The Parish Council has also corresponded with the Planning Casework Unit at the Department for Levelling Up, Housing and Communities (PCU). The PCU informed the Parish Council (WH B15)[3] that the Secretary of State declined to call-in the matter. In so doing *"the Secretary of State notes that the MPA has stated that it will not proceed to determine the ROMP Application for the reasons stated [in its letter of 27 October]"* (WH B14)[4]

2.8.32. The MPA in an officer delegated decision report of 12 January 2024 (the Delegated Decision Report) (WH C2) in effect decided that the Application was invalid and therefore incapable of lawful determination. Albeit that the precise wording of the MPA is addressed below.

2.8.33. On 28 June 2024 the Appellant's agent submitted the Appeal.

2.8.34. On 21 October 2024 in a further officer delegated decision (the Second Delegated Decision Report) the MPA reversed its decision in respect of the Green Area confirming that it did not consider the Permission to comprise a relevant planning permission in respect of the Green Area, in addition to its previous decision that there was no relevant planning permission in respect of the Blue Area.

2.8.35. It should be noted that the Application in any event requires a new access. Two planning applications have been submitted for "a new vehicular access to quarry". Both have been withdrawn. There is presently no live planning application for a new access.

[2] Lafarge Aggregates Ltd v Scottish Ministers 2004 SC 524
[3] Letter 15 November 2023 [redacted] Planning Casework Unit, to [redacted] Plumbland Parish Council
[4] Letter 27 October 2023

2.9. The Parish Council has previously made enquiries of the MPA and been informed that no appeal had been submitted. In any event the Parish Council is very surprised not to have been made aware of the appeal by an earlier date.

3. Request for prior determination of legal issues

3.1. The submission by SH reads more like a complaint against the MPA than an appeal.

3.2. It is misleading and disingenuous in omitting reference to many material matters.

3.3. Most fundamentally both the Application and Appeal are invalid for the reasons set out below. It is therefore not open to the Secretary of State to consider the appeal.

3.4. The Secretary of State should, as a priority and first step in advance of any further consideration of the appeal, consider the issue of validity.

3.5. We therefore respectfully request that the Secretary of State does so.

4. The ROMP schema

4.1. The ROMP schema as set out in the 1995 Act amends the existing legal framework in relation to mineral working and restoration, seeking to regularise, modernise and regulate that tranche of old mineral consents. It represents a self-contained system primarily set out in Schedule 13 of the 1995 Act (WH D2).

4.2. The ROMP process has two stages: Stage 1 being the Listing stage; Stage 2 providing for application for new, modern conditions to enable minerals working to take place[5].

4.3. As part of the Listing stage a distinction was drawn both Phase I and Phase II sites and between dormant and active mineral sites.

4.4. A Phase I site is a mineral site where either the whole or the greater part of the site is subject to relevant planning permissions granted after 30 June 1948 and before 1 April 1969[6]. A Phase II site is a mineral site where either the whole or the greater part of the site is subject to relevant planning permissions granted after 31 March 1969 and before 22 February 1982[7].

4.5. Moreover, a Phase I or Phase II site is a 'dormant' site if no minerals development has been carried out to any substantial extent in, on, or under the site at any time in the period beginning on 22 February 1982 and ending with 6 June 1995.

4.6. No minerals development can lawfully be carried out at a dormant site until a new scheme of conditions had been submitted to and approved by the MPA. There is no specified date for such applications.

4.7. For a site to have been listed as a mineral site, this requires the identification of a relevant planning permission. "Relevant planning permission" being any planning permission, other than an old mining permission or a planning permission granted by a development order, granted after 30 June 1948 for minerals development.[8] .

[5] Environment Act 1995 Schedule 13 paragraphs 3, 4 ad 9
[6] Environment Act 1995 Schedule 13 paragraph 2
[7] Ibid
[8] Environment Act 1995 Schedule 13 paragraph 1(1)

4.8. "Planning permission" is undefined in the 1995 Act but in the TCPA 1990 is any planning permission issued under Part III of that Act .

4.9. "Minerals development" means "development consisting of the winning and working of minerals, or involving the depositing of mineral waste"[9].

4.10. In undertaking its initial listing (WH C3) under the 1995 Act the MPA included High Close Quarry on the basis of the 8 December 1954 permission.

4.11. The ROMP schema contains a number of mandatory statutory requirements which must be satisfied in order that an application to amend working conditions may be made and determined.

4.12. These include the following.

4.13. There are strict qualifying criteria as to who can be an applicant. The right to submit an application under Schedule 13 of the 1995 Act is limited to the Owner or a person who is entitled to an interest in a mineral.[10]

4.14. An application shall be in writing and shall[11]:

4.14.1. identify the mineral site to which the application relates[12];

4.14.2. specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest[13];

4.14.3. identify any relevant planning permissions relating to the site[14];

4.14.4. identify, and give an address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site[15];

4.14.5. set out the conditions to which the applicant proposes the permissions… should be subject[16]; and

4.14.6. be accompanied by the appropriate certificate[17]

4.15. The 1995 Act also imports the terms of the Town and Country Planning Act 1990 in relation to any certificate purporting to be the appropriate certificate. It is a measure of the importance and significance of the need to provide the appropriate certificate that criminal offences apply in respect of the completion of the appropriate certificate.[18]

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[9] Section 96 (6) Environment Act 1995
[10] Environment Act 1995 Schedule 13 paragraph 9 (1)
[11] Ibid paragraph 9 (2)
[12] Ibid paragraph 9 (2) (a)
[13] Ibid paragraph 9 (2) (b)
[14] Ibid paragraph 9 (2) (c)
[15] Ibid paragraph 9 (2) (d)
[16] Ibid paragraph 9 (2) (e)
[17] Ibid paragraph 9 (2) (e)
[18] Environment Act 1995 Schedule 13 paragraph 9 (3) and Section 65(6) Town and Country Planning Act 1990

4.16. Appeals made under paragraph 11(1) are required to be made on a specified form: it "shall be made on a form supplied by or on behalf of the Secretary of State for use for that purpose, and giving, so far as reasonably practicable the information required by that form"[19]

4.17. For the reasons set out below the Application fails to meet each and every of the mandatory requirements of the 1995 Act as underlined above.

5. **Invalid Application - Relevant Planning Permission**

5.1. As noted above it is a requirement of the 1995 Act that a Schedule 13 application shall identify any relevant planning permission relating to the site.

5.2. Indeed, the very rationale underpinning the ROMP regime is that there must be a relevant planning permission to which new conditions can attach. A ROMP is intrinsically and fundamentally parasitic upon the existence of a relevant planning permission which in turn must logically be extant and capable of implementation.

5.3. Moreover, it is in effect a statutory prerequisite that there must be a relevant planning permission. If there is no relevant planning permission, then there can be no valid application. There can therefore be no lawful determination of such application.

5.4. There is no relevant planning permission in this instance because the Permission is not capable of being implemented.

Planning permission CA 49

5.5. The sole planning permission upon which the Applicant/Appellant seeks to rely is that granted by Cumberland County Council on 8 December 1954 and known by reference CA 49 (the Permission). No other planning permission is stated to be a relevant planning permission.

5.6. The Permission is what would now be termed a hybrid permission. It comprises an area edged green for which detailed consent was granted and which has been worked; and a blue area for which “in principle” consent was granted subject to a condition requiring approval of details.

5.7. Condition 1 states that "excavations shall be limited to the area edged green on the attached plan".

5.8. Condition 2 states that "permission is given in principle for quarrying to be carried out within the area edged blue on the attached plan, but quarrying shall not commence until full details have been submitted to and approved by the Local Planning Authority, who reserve the right to impose reasonable conditions".

5.9. The Application seeks to rely on CA 49 as the sole relevant planning permission.

5.10. CA 49 is not a relevant planning application.

5.11. The Application therefore does not contain a relevant planning application. As such, it is a nullity. It cannot be determined.

Blue Area

[19] Environment Act 1995 Schedule 13 paragraph 16 (2)

5.12. The Blue Area has only ever benefitted from "in principle" consent.

5.13. As a matter of law an outline or "in principle" permission is incapable of constituting a relevant planning permission for the purposes of the 1995 Act.

5.14. The decision in Lafarge Aggregates Ltd v Scottish Ministers[20] ("Lafarge") applies (WH D6).

5.15. Notwithstanding that it is a Scottish case the relevant Scottish legislation mirrors the 1995 Act in all material regards.

5.16. The President of the Court of Session, Lord Cullen, in the lead judgement, noted that, given the nature of minerals working, the in principle condition was not so much concerned with a future provision of details, as with a future proposal for development.

5.17. Moreover, he concluded that the MPA was correct in that: *"the land to which a relevant planning permission relates" means, in my view, the land in respect of which specific minerals development has been authorised. [The larger "in principle" site] does not satisfy that description since winning and working in these areas has never been authorised…".*

5.18. It should also be noted that the judgement of Lord Marnoch at paragraphs 55 and 56, which although obiter, contains further judicial opinion as to the meaning of "relevant planning permission: *"… I should make it clear that, had it been necessary to do so, I, myself, would have been prepared to go further and hold that a 'planning permission in principle' or any other supposed 'planning permission' which like '1965/79' prohibited the commencement of work pending further approval of aspects of the application could not in any circumstances itself constitute a 'relevant planning permission' for the purposes of Schedule 9 to the Town and Country Planning (Scotland) Act 1997".*

5.19. It should also be noted that in the Supreme Court had regard to Lafarge in its decision in G Hamilton (Tullochgrabbin Mains) Ltd v Highland Council[21] (WH D7), Lord Walker noting that "the evolution of the legislation has been described in detail by the Lord President (Lord Cullen)" in Lafarge.

5.20. Detailed submissions in WH letter of 12 May 2023 (WH B1) on behalf of the Parish Council set out the position as regards the Blue Area.

5.21. It is noted that albeit for different reasons the MPA has also concluded that there is no relevant planning permission in respect of the Blue Area.

5.22. There is in any event clear and compelling high legal authority that the CA49 as regards the Blue Area cannot lawfully comprise a relevant planning permission.

<u>Green Area</u>

5.23. There is no relevant planning permission in respect of the Green Area.

5.24. New planning conditions cannot lawfully be determined under the 1995 Act (as amended) in respect of the Green Area.

[20] Lafarge Aggregates Ltd v Scottish Ministers 2004 SC 524
[21] G Hamilton (Tullochgribban Mains) Ltd v Highland Council [2012] UKSC 31

5.25. Applying the rules in respect of interpretation of planning permission per *Barnett*[22] (WH D8), *R v Ashford Borough Council*[23] (WH D9), *Wood*[24] (WH D10) and otherwise *"in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions …"*[25] .

5.26. Detailed submissions are set out in WH letters of 15 February 2024 (WH B7), 21 March 2024 (WH B9) and 14 May 2024 (WH B11).

5.27. To summarise those submissions:

5.27.1. A detailed reading of the Permission and its conditions evidences a consistent and deliberate delineation between the detailed "continued working" position within the Green Area, and the "in principle" permission as regards the Blue Area.

5.27.2. As regards the Green Area, there is expressly stated to be permission for the "working" of minerals

5.27.3. There is conversely no mention of permission "to win" or for "the winning" of minerals.

5.27.4. "Working" is further defined by expressly being for the "continued" working, which reflected the actual factual position at the time

5.27.5. That has the effect of restricting the working permitted to a continuance of that already having occurred and ongoing at the quarry.

5.27.6. The relevance of the references to the green line in CA49 is that the existing quarry sat within that area. CA49 does not grant permission to win and work mineral up to the green line, but rather only for the continued working of the existing quarry which was to extend no further than the green line.

5.27.7. It is moreover no longer possible to comply with conditions that apply to the Permission in respect of the Green Area. The MPA has noted that evidence of the quarry void has been removed. It goes much further than that. It is not only evidence of the quarry void that has been removed. It is its very essence and existence that has gone. In that context it is no longer possible to comply with conditions 3, 4 and 6. For example, the requirement of condition 6 as regards plant to be sited on the floor of the quarry is intrinsically tied to the then, and ongoing, existence of the quarry void.

5.28. The clear meaning and proper interpretation of the Permission is that it reflects the fact that the winning of the mineral had already taken place and a quarry had already been created. It is that working, and no other, that was thereby approved in detail by CA49. It never authorised the winning of mineral within the Green Area. There never has existed any such consent.

5.29. It is strongly arguable that permission CA49 was spent when working ceased in 1956 and it thereafter was no longer possible for there to be "continued working".

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[22] Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476
[23] R v Ashford Borough Council ex p Shepway District Council [1998] JPL 1073
[24] Wood v Secretary of State for Communities and Local Government [2015] EWHC 2368 (Admin)
[25] ibid

5.30. Moreover, over fifteen years the implementation of the Landfill Permission filled the worked void in the Green Area with landfill. That amounts to a new chapter in the planning history of the site and renders CA49 spent. In order now to access the limestone it would be necessary to win the mineral, by effecting the removal of the landfill. That is not legally possible pursuant to CA49 because the Permission does not authorise (and never has authorised) the winning of limestone, only its working (itself only as part of continued working on a very specific basis, now also no longer possible).

5.31. The Pilkington[26] (WH D11) line of authorities is thus not engaged, because there is no conflict of permissions in the first instance; there being no consent to win minerals in any event.

5.32. The opinion of [redacted] immediate predecessor as Interim Manager in Development Control at Cumbria County Council, is entirely consistent with the above. In an email to [redacted] dated 25 July 2017 (WH A9), [redacted] noted his surprise at the scoping for the then ROMP proposal *"given the green permitted working area of the site had been worked out, restored and at some point subsequently built on in part for agricultural purposes…".*

5.33. The end of working of the quarry and the filling of the void amount both in fact and in law to the cessation of High Close Quarry and render the CA49 Green Area permission spent.

5.34. It should also be noted that the MPA's approach to the First List may well be criticised. Well before the requirement to produce a First List under the 1995 Act, the Green Area had been landfilled, restored and put to agricultural use. Notwithstanding that the MPA put a line around both the Green Area and Blue Area in its List plan, the LPA, Allerdale Council, had already concluded, when deciding to grant planning permission for the landfill, that the site was " a disused limestone quarry" and it was on that very basis that planning permission for landfill was granted. The benefit of it leading to "restoration of the disused quarry to productive agricultural use" was an express factor (WH A5).

5.35. Indeed, what is striking is that until very recently there has been no suggestion that the Green Area was capable of renewed working.

5.36. For example, the MPA's County Solicitor's opinion per his memorandum of 26th January 1987 (WH A7) dealt only with the Blue Area. No reference is made to the Green Area at any stage. Indeed in 1987 the quarry comprised in the Green Area was in fact a fully operational Council-run domestic waste site.

5.37. Similarly, whilst the opinion offered by [redacted] to [redacted] (28th August 2001) (WH A8) confirmed that the Blue Area was included in the Council's First List, it makes no reference to the Green Area, which in 2001 was in agricultural use after restoration.

5.38. As this submission was being finalised the Parish Council received from the MPA a copy of the a delegated decision dated 21 October 2024 taken by [redacted] Assistant Director Inclusive Growth and Placemaking (Second Delegated Decision Report) (WH C4) . It reverses the MPA's position as set out in the Delegated Decision Report of 12 January 2024 (WH C2) drafted by [redacted] in respect of the Green Area.

[26] Pilkington v Secretary of State [1973] 1 WLR 1527, [1974] 1 All ER 283

5.39. The Second Delegated Decision Report states:

5.39.1. *"Since the delegated decision of 12 January 2024, further representations have been made by Plumbland Parish Council, their solicitors and the applicant and their legal representatives in connection to the "green area" of the Site. Upon consideration of the further representations, the Council's view is that no part of the 1954 Permission, including the part referred to as the 'green area,' could be considered a 'relevant planning permission' for the purposes of the Environment Act 1995, and so no part of the site should have been included in the 1996 List. This is the updated position since the decision of the 12 January 2024*." (para 2.2)

5.39.2. "*The 1954 permission granted permission for the 'continued working' of the quarry. In 1976, however, permission was granted to landfill the quarry void that had been created in the 'green area' at the site. Landfilling was completed around 1991 and the land restored. As such, there was then no quarry in existence which could continue to be worked. From that point onwards, any quarry working in the 'green area' would not be a continuation of what had gone before but the initiation of fresh working and/or the creation of a new quarry and not therefore in accordance with the terms of the 1954 Permission."* (para 3.1)

5.39.3. "In essence, the 1954 Permission is no longer capable of implementation in the 'green area' in the way envisaged when it was originally granted or in accordance with its terms and is thus not a 'relevant planning permission' for the purposes of a ROMP application. Given this, it is recommended that a decision is made as noted above at paragraph 1.5 and the applicant advised accordingly". (para 3.2)

5.39.4. *"If the above recommendation is accepted, no aspect of the 1954 Permission is a relevant permission for the purposes of a ROMP application".(*para 3.3)

<u>Definition of "minerals development"</u>

5.40. The ROMP regime applies to "minerals development". "Minerals development" means "development consisting of the winning and working of minerals, or involving the depositing of mineral waste"[27] .

5.41. To fall within the statutory definition there must be permission both to win and to work minerals. The "and" is of course conjunctive and requires that for development to be minerals development it must comprise the entire act of mineral extraction, namely both its winning and working.

5.42. The Permission does not comprise a relevant planning permission authorising the winning of minerals in the Green Area.

5.43. Nor does the Permission comprise authorisation for winning and working of minerals in the Blue Area since it only benefits from an "in principle" consent .

[27] Section 96(6) Environment Act 1995

No disaggregation of the Permission and Application

5.44. It is submitted that neither the Permission nor the Application can as a matter of law be disaggregated.

5.45. To the extent that if both, or either, of the Blue or Green Areas are incapable of implementation then the entirety of the Permission falls. There is no relevant planning permission for the purposes of the 1995 Act.

5.46. In any event the Application as presently framed applies both to the Blue Area and the Green Area.

5.47. It is not suggested by Thomas Armstrong that the Application can be disaggregated in any way. Therefore, if both, or either, of the Blue or Green Areas are not subject to an implementable planning permission then the entirety of the Application fails.

5.48. We note that up to a point the MPA's approach as set out in its Delegated Decision Report is also that because the Application is predicated on the basis of the continuing validity of the Permission in its entirety it is invalid and incapable of determination.

6. Invalid Application - Identity of Applicant / Appellant

6.1. This issue is important in its own right because it also goes to the question of the validity of the Application and therefore either the MPA's ability to determine it, or indeed the Secretary of State's ability to entertain an appeal.

6.2. It is also significant in casting light on the manner in which the Application has been promoted.

6.3. Notwithstanding that, the question of the identity of the Applicant and Appellant respectively does not in any event affect the force of the central legal submission as regards the absence of a relevant planning permission above.

6.4. As noted above Owner is defined as *"the estate owner in respect of the fee simple; or a person who is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired*"[28] . As noted above it is only "any person who is the owner of any land, or who is entitled to an interest in a mineral" who may submit an application.

6.5. No other person is entitled to make an application.

6.6. The application form that appears on the MPA's website remains that dated 28 August 2019 (WH C1). It does not appear to have been amended or "superseded" which is the terminology applied by the MPA where documentation has been updated.

6.7. The Application has been submitted by SH in the name of Thomas Armstrong Limited. The relevant application form states the applicant to be [redacted] of "Thomas Armstrong".

6.8. What this means is clarified by Section 6 of the application form which deals with Site Ownership. Section 6 contains four parts which have been completed as follows:

[28] Environment Act 1995 Schedule 13 paragraph 1(1)

6.8.1. The Surface Land Owner is stated to be Thomas Armstrong Limited, Workington Road, Flimby, Maryport, Cumbria, CA15 8RY.

6.8.2. The Mineral Owner is also stated to be Thomas Armstrong Limited, Workington Road, Flimby, Maryport, Cumbria, CA15 8RY.

6.8.3. In answer to the question Is the applicant the sole owner of the site? The answer Yes has been given.

6.8.4. In answer to the question Does the applicant own/control any adjoining land? the answer Yes has been given.

6.9. Furthermore, attached to the application form is Certificate of Ownership A under the Article 12 Town and Country Planning (Development Management Procedure) Order 2010 completed by the agent for the applicant who has certified as at 28 August 2019 that *"no person other than the applicant was the owner of any part of the land to which the application relates at the beginning of the period 21 days before the accompanying application".*

6.10. The applicant is therefore clearly stated to be Thomas Armstrong Limited.

6.11. Thomas Armstrong Limited however is not and never has been the owner of the relevant land.

6.12. The reason is simple. There is not and never has existed a company called Thomas Armstrong Limited. It therefore cannot have submitted the Application.

6.13. The MPA's website states that the application form remains that dated 6 September 2019. This has been completed in the name of a non-existent company. Given that it is in effect a fiction, the Application is a nullity.

6.14. Concerningly all of the claims and statements made in the Application in support of Thomas Armstrong Limited as Applicant are incorrect.

6.15. SH has submitted the Appeal in the name of Thomas Armstrong (Aggregates) Limited. The MPA's Delegated Decision Report (WH C2) also refers to the applicant as being Thomas Armstrong (Aggregates) Limited. The land at High Close Quarry was indeed purchased on 23 August 2016 by Thomas Armstrong (Aggregates) Limited (Co Reg no 01278704).

6.16. However, there is no evidence on the Planning Register as comprised in the form on the MPA's website that an application has been made in the name of Thomas Armstrong (Aggregates) Limited. Nor is there any evidence that all consequential statutory requirements such as publicity have been properly complied with.

6.17. Furthermore, it is not apparent how any such change of applicant is purported to have been lawfully effected. The legislation makes no provision for substitution of an applicant for a ROMP. It does entitle a person meeting the qualifying criteria to submit its own application, subject of course to meeting validity requirements. Indeed, we note that [redacted] letter of 6 December 2023 (WH B7) states that "Thomas Armstrong" (sic) *"will in the circumstances prepare and submit a ROMP application for winning and working limestone in the area edged green ("the Green Area") …"* and that *"in consideration of the time and expense incurred to date, it is the company's desire to progress this as promptly as possible."* It is however not apparent that any such application has been submitted.

6.18. There are thus fundamental, irredeemable, and ongoing errors and failings in the Application such that it is a nullity and invalid.

6.19. In short, "Thomas Armstrong Limited" is non-existent and did not have the capacity to submit the Application. In turn, Thomas Armstrong (Aggregates) Limited, even if it meets the criteria as an Owner, does not have the standing to submit the Appeal.

7. Invalid Application - other application requirements

7.1. In addition to the two central flaws of the Application that render it invalid there are other failings that also do so.

7.2. The failure to specify the land or minerals comprised in the site of which the Applicant is the owner or, as the case may be, in which the Applicant is entitled to an interest[29] is a further aspect of the failure of the Applicant and its agent to turn its mind to the statutory requirements.

7.3. Similarly, such approach is also reflected in the failure to identify and give an address for each other person that the Applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site[30] .

7.4. These are not minor or trivial requirements. They also go to the heart of the ROMP scheme. Moreover, the structure of the application form specifically asks a number of questions of an applicant which requires it to turn its mind to the statutory requirements.

7.5. Most seriously the 1995 Act (incorporating terms of the 1990 Act) and the application form impose the requirement that the application be accompanied by the appropriate certificate[31].

7.6. Section 65(6) of the 1990 Act provides that if any person

> *(a)issues a certificate which purports to comply with any requirement imposed by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or*
>
> *(b)recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular*
>
> *he shall be guilty of an offence*

7.7. To illustrate the significance of the point there is a body of case law under the 1990 Act in which the failure correctly to complete ownership certificates has led to planning permissions being quashed [32],[33]. Moreover, such cases go beyond mere protection of landowner rights to recognising the need to comply with mandatory requirements in any event.

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[29] Environment Act 1995 Schedule 13 paragraph 9 (1)
[30] Ibid paragraph 9 (2) (d)
[31] Environment Act 1995 Schedule 13 paragraph 9 (3) and Section 65(6) Town and Country Planning Act 1990
[32] R. (Pridmore) v Salisbury DC [2005] 1 P. & C.R. 32 (WH D12)
[33] R. (on the application of Bishop) v Westminster Council [2017] EWHC 3102 (Admin) (WH D13)

7.8. Moreover, in the context of the 1995 Act the statutory requirements of the Applicant being the land or mineral owner place even greater significance upon the need to properly identify the relevant parties.

8. Right of Appeal

8.1. In the present circumstances no right of appeal arises.

8.2. The ability to make an appeal is logically dependent upon there being a valid application in the first instance. The MPA's decision of 12 January 2024 is in effect that there is no relevant planning permission and therefore that the requirements of Schedule 13 Paragraph 9 are not met. And also, for the other reasons above there is no valid application.

8.3. There are in effect three situations in which a right to appeal may arise.

8.4. The 1995 Act provides that where the MPA:

> *On an application under paragraph 9 determine under that paragraph conditions that differ in any respect from the proposed conditions set out in the application[34]; or*
>
> *Give notice, under paragraph (d) of paragraph 10(2) …[35], stating that, in their opinion, the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraph (i) and (ii) of the said paragraph (d)*
>
> *then the person who made the application may appeal to the Secretary of State.*

8.5. Neither of those provisions apply to the present High Close Quarry matter. Nor has it been suggested by any party that they do or can apply.

8.6. The third situation is the question of non-determination.

8.7. The default position in Paragraph 9 Schedule 13 provides that where

> *"within the period of three months from the mineral planning authority having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice to the applicant of their decision upon the application, the authority shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the applicant relates is to be subject to and those specified in the application as being proposed in relation to that permission"*

8.8. The default position is therefore that where an application has been received but the authority has not given notice to the applicant of their decision then the authority shall be treated as non-determined.

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[34] Paragraph 11(1) (a) Schedule 13 Environment Act 1995
[35] Paragraph 11(1) (b) ibid

8.9. That default position in respect of ROMP applications subject to an Environmental Statement under the Environmental Impact Assessment Regulations 2017 and incorporating Schedule 2 Planning and Compensation Act 1991 is however different. There is a right of appeal in respect of a ROMP application where an Environmental Statement is required.

8.10. This is summarised in the Minerals Guidance as follows:

> *The minerals planning authority has a period of 3 months to determine the permission if no Environmental Statement is required except where a different time period is agreed in writing between the mineral planning authority and the applicant. Should it fail to give written notice of a decision within this period, the application and the conditions the application proposes are deemed to have been approved (see Schedule 14 to the Environment Act 1995). Where an Environmental Statement is required, the mineral planning authority has 16 weeks to determine an application. If it does not determine the application within this date, however, the application and conditions are not automatically approved. The applicant may appeal to the Secretary of State to determine these conditions after this time. Paragraph: 204 Reference ID: 27-204-20140306*

8.11. The EIA Regulations 2017 define a ROMP application as: "an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under- …(b) paragraph 9(1) of Schedule 13 (review of old mineral planning permissions) to the 1995 Act.[36]

8.12. For the purposes of the 2017 Regulations therefore a ROMP application must satisfy the requirements of paragraph 9 (1) of Schedule 13 of the 1995 Act. The Application does not meet those requirements and therefore does not constitute a ROMP application to which the 2017 Regulations apply including any right of appeal.

8.13. If there is no application, there can be no appeal.

8.14. However, we note that the MPA in its Delegated Decision Report asserts that "*if the above recommendation is accepted, the applicant could appeal to the Secretary of State on the grounds of non-determination".*

8.15. Moreover, the Delegated Decision Report further states that *"an alternative course of action for the applicant could be to seek an order from the High Court to compel the Council to determine the application. However, as the applicant has an alternative remedy by way of an appeal for non-determination… and the applicant would still need to persuade the Court that a relevant planning permission exists for the "blue area", this course of action is considered unlikely"*.

8.16. It is respectfully suggested that this is the wrong way round. The right of appeal identified requires there to be a valid application. The substance of the decision made by the MPA does not amount to "non-determination" but is a determination of invalidity of which it has given public notice at least by means of the Delegated Decision Report.

[36] Regulation 2 (1)Town and Country Planning (Environmental Impact Assessment) Regulations 2017 SI 2017 No 571

8.17. The fact that, in the alternative, the MPA cannot possibly have given notice to the Applicant, because that party is non-existent, is yet a further aspect of the nonsensical and flawed way in which the Application has been submitted.

8.18. At one and the same time it is readily apparent from the correspondence that the Appellant's agent has been well aware of the MPA's position.

8.19. In which instance the questions that fall to be resolved are the existence of a relevant planning permission and a valid application respectively. These are questions of law that fall to be determined by the courts, not the Secretary of State. It was open to Thomas Armstrong to seek a judicial review of the Council's decision in respect of the Blue Area. It has chosen not to do so and is now out of time to do so. That decision therefore stands.

8.20. The Appeal has not in any event been made in accordance with the requirements of the 2017 Regulations and Minerals Guidance.

8.21. Just as there are mandatory requirements for a ROMP application there are also mandatory requirements in respect of an appeal. An appeal must be duly made.

8.22. The right of appeal in the circumstances engaged by the EIA Regs 2017 in turn engages the provisions of Schedule 2 of the 1991 Act.

8.23. Paragraph 5 (1) provides that where a right of appeal arises *" the applicant may appeal to the Secretary of State"*.[37] As previously stated the Appellant is not the Applicant.

8.24. Paragraph 5(3) provides that an appeal under paragraph 5 of Schedule 2 of the 1991 Act *"must be made by giving notice of appeal to the Secretary of State".*[38]

8.25. Paragraph 5 (6) defines a notice of appeal as a notice which:

> *"(a) is made on an official form, and*
>
> *(b) is accompanied by an appropriate certificate"*

8.26. Paragraph 5(10) states that "Official form" means, in relation to an application or appeal, a document supplied by or on behalf of the Secretary of State for use for the purpose in question.

8.27. No such official form appears to have been completed and little in the way of required documentation provided. For example, the *"official form for Appeals to the Secretary of State Mineral Site / Mining Site Environment Act 1995 (appeal under section 96 and paragraph 11 of Schedule 13…)"* found in the Minerals Guidance would have been appropriate.

8.28. It should be noted that at section D Supporting Documents there is an extensive list of supporting documents that are required to be submitted, none of which appear to have been submitted in this case. Nor have requirements as to appropriate certificates and notices been complied with.

8.29. The Appeal is characterised by such a paucity of information and relevant documentation that it cannot be considered to have been duly made.

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[37] Paragraph 5 (1) Schedule 2 Planning and Compensation Act 1991
[38] Paragraph 5 (3) Schedule 2 Planning and Compensation Act 1991

9. **Access**

9.1. For the sake of completeness, it should be noted that the Application has been accompanied by:

9.1.1. a planning application dated 6 September 2019 REF for "a new vehicular access to quarry" (The First Access Application) which was subsequently withdrawn on 19 April 2021; and

9.1.2. a planning application dated 16 March 2023 (ref 2/23/9004) (the Second Access Application) which was subsequently withdrawn on 18 December 2023.

9.2. There is presently no permission nor indeed any live planning application for a vehicular access to either the Green Area or the Blue Area.

9.3. It would appear that Thomas Armstrong does not have control of the land proposed as an access.

9.4. We also note incidentally that documentation in respect of the access is as confused about the identity of the Applicant as is the Application.

10. **Further comments on the Stephenson Halliday Letter 28 June 2024 and Statement of Case**

10.1. SH's misconceived approach has carried through to the Appeal which repeatedly states that the Application is "a planning application" (ref 2/19/2019).

10.2. It is also noted that SH in its letter of 28 June acknowledges that the MPA's approach has been founded on the validity of the Permission (and therefore the Application) and not the merits of the new conditions proposed.

11. **Proposed new Conditions**

11.1. On a strictly without prejudice basis the Parish Council has made representations to the MPA addressing some of the issues, particularly noise issues, that arise in the context of suggested new conditions.

11.2. Without prejudice to the above submissions as regards invalidity, the Parish Council expressly reserves its position as regards the substance of the proposed new conditions.

11.3. In any event it should be noted that the Appeal as submitted does not even contain suggested conditions

11.4. Also on one specific point, the Application does not contain any detailed assessment of the environmental impacts arising from the diversion or removal of the high-pressure gas main.

12. **Other submissions**

12.1. Furthermore, the Parish Council expressly reserves the right to make further submissions in relation to any representations made by other parties, most particularly those that may be made on behalf of the MPA or Thomas Armstrong (Aggregates) Ltd.

Ward Hadaway LLP

24 October 2024

Appendices

(A) Planning Documents

WH A1	CA49 permission dated 8 December 1954 issued by Cumberland County Council
WH A2	Plan referred to in CA49 Permission
WH A3	Note of site inspection 15 December 1958
WH A4	Planning permission for landfill - reference 02/76/0357 - consent to tip waste into the green area void at High Close Quarry
WH A5	Report to the Allerdale District waste disposal sub-committee of 14 July 1976
WH A6	Memorandum 26 January 1987 County Solicitor, Cumbria County Council to County Planning Officer
WH A7	Letter 28 August 2001 Senior Planning Officer, Cumbria County Council
WH A8	Email 25 July 2017 , Interim Manager Development Control, Cumbria County Council to [redacted] Stephenson Halliday
WH A9	Extract from First List January 1996
WH A10	Cumbria County Council Waste Disposal Sub-Committee Conditions for Resolution in respect of "Landfill Site" 10 April 1976
WH A11	Cumbria County Council, Town and Country Planning Acts, Statement of County Council Development 7 April 1976
WH A12	Cumbria County Council, Papers presented to Development Control Sub-Committee, April 1976
WH A13	Drawing No E 108.33/05/1/Am0 Cumbria County Council Waste Disposal Section, Allerdale District, High Close Quarry Waste Disposal Site, Plumbland, Aspatria, Location Plan
WH A14	Lancashire County Council report on leachates at High Close Quarry 6 June 1983
WH A15	Waste Types Deposited at High Close Landfill Site During year 01/01/91 to 31/12/91
WH A16	Letter 5 May 1976 Ministry of Agriculture, Fisheries and Food to Director of Planning, Cumbria County Council
WH A17	Waste Disposal Sub-Committee 31 august 1977, Control of Pollution Act 1974, Waste Disposal Site at high Close Quarry, Plumbland, Statement of proposed Development and Operation

WH A18	Cumbria County Council, Control of Pollution Act 1974, Modification of Site Resolution 5 December 1984
WH A19	Cumbria County Council Waste Disposal Sites note recording last visit of 23/02/1993

(B) Correspondence

WH B1	Letter 12 May 2023 Chief Legal Officer, Cumberland Council
WH B2	Email 30 June 2023 , Solicitor, Cumberland Council to
WH B3	Letter 5 October Burnetts to , Minerals and Waste Team, Cumberland Council
WH B4	Letter 12 October 2023 Ward Hadaway to , Solicitor, Cumberland Council
WH B5	Email 27 October 2023 , Solicitor, Cumberland Council to ,
WH B6	Letter 15 November 2023 , Planning Casework Unit, Department for Levelling Up, Housing and Communities to [redacted] Plumbland Parish Council
WH B7	Letter 6 December 2023 , , to Minerals and Waste Team, Cumberland Council
WH B8	Letter 15 February 2024 to , Senior Lawyer, Cumberland Council
WH B9	Email 7 March 2024 Senior Lawyer, Cumberland Council to
WH B10	Letter 21 March 2024 to , Senior Lawyer, Cumberland Council
WH B11	Letter 19 April 2024 Burnetts to Minerals and Waste Planning Team, Cumberland County Council
WH B12	Letter 14 May 2024 to Senior Lawyer, Cumberland Council
WH B13	Email 17 July 2023 , PCU
WH B14	Letter 27 October 2023 , Manager Development Control and Sustainable Development, Cumberland Council to , Planning Casework Unit, Department for Levelling Up, Housing and Communities

(C) ROMP Documents

WH C1	Application form
WH C2	Cumberland Council, Delegated Decision Report, 12 January 2024
WH C3	Counsel's Opinion
WH C4	Cumberland Council, Delegated Decision Report, 21 October 2024

(D)Legislation and case law

WH D1	S96 Environment Act 1995
WH D2	Environment Act 1995 Schedule 13
WH D3	Environment Act 1995 Schedule 14
WH D4	Part 9 Town and Country Planning (Environmental Impact Assessment) Regulations 2017
WH D5	Schedule 2 Planning and Compensation Act 1991
WH D6	Lafarge Aggregates Ltd v Scottish Ministers 2004 SC 524
WH D7	G Hamilton (Tullochgribban Mains) Ltd v Highland Council [2012] UKSC 3
WH D8	Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476
WH D9	R v Ashford Borough Council ex p Shepway District Council [1999] PLCR 12
WH D10	Wood v Secretary of State for Communities and Local Government [2015] EWHC 2368 (Admin)
WH D11	Pilkington v Secretary of State [1973] 1 WLR 1527, [1974] 1 All ER 283
WH D12	R. (Pridmore) v Salisbury DC [2005] 1 P. & C.R. 32
WH D13	R. (on the application of Bishop) v Westminster Council [2017] EWHC 3102 (Admin)

(E) Miscellaneous

WH E1	Plan of Plumbland Parish Council administrative area
WH E2	Companies House details for Thomas Armstrong (Aggregates) Limited
WH E3	Companies House details for Thomas Armstrong (Holdings) Limited