STEPHENSON HALLIDAY

Planning, Landscape & Environment
an RSK company

ENVIRONMENT ACT 1995 SCHEDULE 13,14

REVIEW OF OLD MINERAL PERMISSIONS (ROMP) APPEAL

APP/ROMP/24/3

APPEAL BY: Thomas Armstrong (Aggregates) Limited

SITE AT: High Close Quarry, High Close Farm, Plumbland, Aspatria, CA7 2HF

Appellant's Final Comments

Introduction

1. This statement has been prepared to convey the Appellant's final comments in relation to the appeal reference APP/ROMP/24/3. It specifically addresses relevant comments contained in the following documents:

    1. The Mineral Planning Authority's (MPA) Pre Inquiry Statement
    2. Plumbland Parish Council representations dated the 24th October 2024 and 2nd December 2024
    3. Other representations from residents and third party organisations.

2. At the request of the Planning Inspector issues of a legal nature have been addressed by a separate submission by Thomas Armstrong (Aggregates) Limited (hereafter Thomas Armstrong). This was submitted to the Planning Inspectorate (PINS) on the 5th of December 2024. Other matters have been addressed previously in the Appellant's Pre Inquiry Statement. Additional comment is provided below as required.

3. The MPA's Pre Inquiry Statement is wide ranging.

4. Plumbland Parish Council has made two representations dated 24th October 2024 and 2nd December 2024.

5. Other representations have also been made by a number of residents, Gilcrux Parish Council and Northern Gas Networks.

6. For the ease of consideration, the issues raised have been grouped into broad headings below including a reference back to the origin of the issue as required.

VALIDITY OF THE ROMP AND THE APPEAL

7. Representations have been made under separate legal submissions on this matter and the Appellant does not wish to repeat these arguments in this statement.

INDIVISIBILITY OF THE PLANNING CONSENT

8. The Appellant does not agree with the MPA's statement at paragraph 2.3 that:

> "The permission … is unusual in that it effectively splits the site into two distinctly separate areas".

9. The use of a 'programming condition' was common practice for minerals development during the 1950s. To the contrary, no statutory regime for outline planning consents existed nor has one ever existed for minerals development.

10. This position is confirmed by the authoritative report: *Planning Control Over Mineral Working: Report of the Committee Under the Chairmanship of Sir Roger Stevens to The Department of the Environment, Scottish Development Department and Welsh Office* (H.M. Stationery Office, 1976). This point is expanded below.

11. The Stevens Report provides substantial and relevant context to the nature of mineral planning and development control in the 1950s and 1960s. It is highly pertinent that the findings of the Stevens Report were substantially progressed in legislation through the enacting of the Town and Country Planning (Minerals) Act 1981. The Act put in place a regime for periodical reviews of mineral workings. This ultimately led to formation of the ROMP process.

12. Paragraph 7.18 of page 73 the Stevens Report is unequivocal in confirming that by 1976:

> "…outline planning permission as statutorily defined can be granted only for the erection of a building."

13. It is relevant to comment that the Stevens Report goes on to identify the unsuitability of the general concept of outline planning consents in relation to minerals development. This concern was valid and the more sophisticated minerals planning regime that emerged following the Stevens Report, achieved through several legislative steps, is not one which permits outline consent to be granted.

14. Instead, it is the regime discussed at section 7.24 (page 74) which supports the submission of regular schemes for winning, working and restoration as was envisaged when planning permission CA.49 was granted, sections 7.24 and 7.25 are produced below for convenience:

> ***IV Phasing and programming***
>
> *7.24 For many mineral workings, particularly those opencast workings which progress laterally rather than vertically and those in which progressive restoration is possible (and, if it is possible, it should always be required as a condition of the permission), it is reasonable that the country planning authority and the operator should from time to time agree upon the phasing and programming of the next stage of the operation. We understand that it is possible, under present powers, to attach to a mineral permission a condition requiring the*

operator to secure the planning authority's approval to his working and restoration programme from time to time. For example, such a condition was applied in 1954 by the then Minister of Housing and Local Government to a grant of permission for the working of mineral in an area of some 1,000 acres (it was expected that the working would continue for some 50 to 60 years) in the following terms:

After 1st January,1956, the winning and working of minerals and the restoration of the land shall proceed in accordance with such programmes of operations, as may be agreed from time to time with the local planning authority or, in default of agreement, as shall be determined by the Minister, and such programmes shall include provisions for securing:

(a) That the land comprised in this permission is restored, to the greatest extent possible, to a level and condition suitable for the resumption of normal agricultural operations, with provision for the suitable treatment of such parts of the area as the programme does not require to be so restored;

(b) That the surface soil removed during the course of mining operations is stripped separately and stored for eventual respreading over the surface of land restored in compliance with proviso (a) above;

(c) That all overburden and waste materials removed during the course of mining operations are disposed of within the excavations.

We understand that, in this particular case, the arrangement has worked well,[21] and the fourth agreed working programme is now operative.

7.25 The versatility of a programming condition, such as is described above, will be increased by our recommendation (Chapter8) that county planning authorities should be able to review the conditions of a planning permission at regular intervals. Under the present law once a programme has been agreed under a programming condition, that programme can only be amended by mutual agreement or by use of the powers to modify or revoke a planning permission. If the programme were considerably delayed, the planning authority could not amend it without using the powers of section 45 of the Town and Country Planning Act 1971 to modify the permission[22]. We therefore recommend that the conditions attached to a programme should be treated as conditions of the mineral permission; the authority will then be able to review the programme in the course of a review of conditions.

15. Whilst it is agreed that the permission CA.49 clearly identifies two areas bound by lines of different colours for ease of delineation, both are:

    - part of a single application site
    - the subject of a single planning consent with a single reference number.

16. The decision notice employs the use of planning conditions to appropriately limit the nature and type of operations; and, in respect of the wider blue area until such time that appropriate further details have been provided. This is the regime that Stevens describes at paragraph 7.24. Importantly, with reference to paragraph 7.25, Stevens and the Appellant agree that a permission with an attached programming condition can only ever be "a planning permission", i.e. a singular consent.

17. Unusually in the circumstances of this appeal process and the ROMP submission, the MPA has accepted at paragraph 2.4 of its statement:

> "This effectively meant, as discussed above, that there are two different areas of the site as part of the 1954 planning permission."

18. The Council then goes on to confirm that the 1954 planning permission was implemented at paragraph 2.5 and this point is agreed.

19. The Appellant does not agree with the MPA's opinions as expressed at paragraphs 3.4 -3.12 of its statement, noting that the MPA include descriptions such as 'spent' and 'lapsed' which are provided without a definition or explanation. It is not rational in any case that an extant permission allowing the continued working of limestone within a clearly defined boundary could lapse in the circumstances of abundant limestone reserves remaining unworked within said boundary.

20. Similarly, there is no legislative basis underpinning Plumbland Parish Council's arguments that "in principle" planning permission was granted or exists and this has somehow been lost. The decision notice relating to the relevant planning permission and appeal is not complex and can be read and understood in a straightforward manner. Contrary to the Parish Council's line of argument it is common practice today as it was in 1954 for quarries to be progressively worked and reinstated, with periods of inactivity and dormancy interspersed with active quarrying or restoration. Infilling with waste is just one example of such restoration.

21. In summary, the consent granted at High Close Quarry imposes conditions requiring compliance before works could progress to the full extent of the area granted planning permission i.e. the blue area. This can be easily understood as the intent of the decision maker and Stevens also describes this approach (see paragraph 14 above).

22. It did not create two permissions or any element of 'outline' consent. It could not have done so because there was no statutory provision for such a permission to exist when the consent was granted. There is no existence of a separate consent for each area nor is there any attempt to distinguish between the actions of "winning" and "working".

23. What Stevens went on to term a 'programming condition' was imposed to allow the mineral planning authority and the operator the necessary flexibility to agree quarrying and restoration actions over the extensive permission area as and when works progressed. This taking account of the fact that (temporary) minerals operations at a site typically lasted decades, which is very different to other types of (permanent) development. This remains the basis of the mineral planning regime today and is supported by annual monitoring visits (the provision for which is underpinned by legislation).

SUPPOSED BARRIERS TO CONTINUED WORKING

24. Representations by Plumbland Parish Council rehearse multiple arguments concerning: (1) the inability to implement the permission (paragraph 5.4); (2) purportedly complex descriptions about why the permission is "invalid" (section 5), and; (3) arguments that the permission was "spent" as early as 1956 (paragraph 5.29).

25. This ROMP submission has been prepared on the accurate understanding of an extant planning permission being in place and to agree a scheme of modern working conditions pursuant to the

ROMP process. The Appellant wishes to benefit from the permitted mineral reserve and claims to the contrary are without any evidence. The overly complex arguments do not address the fundamental points that:

- A substantial amount of the land subject to an implemented planning consent remains undisturbed (save for grazing) and unworked from the date of permission CA.49; and,
- This same land could be worked for limestone in compliance with the parameters and conditions attached to the planning permission, accepting the need to agree a scheme of new conditions prior to operations re-commencing.

26. Representations by Plumbland Parish Council also argue that there is no separate authorisation for "winning" of mineral. This is a weak point not supported by any evidence or expressly prohibited by a planning condition. There is an effort to advance this argument by stating that limestone could only be accessed by removing the landfill materials used to restore the site. Whilst removing the landfill is not an impossible act in any case, it is not proposed. This rationale also overlooks the obvious point that limestone exists in abundance throughout the permitted area subject to permission CA.49 including in many places protruding directly at the surface. That is why the Appellant has gone to the very considerable trouble, with the long-term co-operation of the Mineral Planning Authority, of preparing a suitable scheme of working and modern conditions.

27. In no regard does planning permission CA.49 seek to determine or control the precise method of quarrying limestone within a clearly defined area; it does however seek to limit the outward effects of the permitted operations and the planning conditions imposed can be read and understood as such.

CONDITIONS AND THE DECISION

28. Part 2 of the MPA's statement discusses the planning policy and guidance context of the decision, before moving on to contemplate a revised set of planning conditions submitted by the Appellant (paragraphs 4.4 – 4.6 and 4.7 – 4.21). The Appellant provided a revised set of 31 proposed planning conditions with its previous submission pursuant to Regulation 22 of the EIA Regulations (2011). The revisions were made to update the conditions in light of the further environmental information prepared by the then applicant.

29. In response to the MPA's Pre Inquiry Statement comments on these matters the following observations are submitted (adopting the same paragraph numbering):

- 4.7: agreed, this condition is appropriately worded and meets the Six Tests.
- 4.8: this is a condition used widely by the former Cumbria County Council. As it is a matter for the operator of the site to maintain compliance with any permission granted this condition could be considered unnecessary and unreasonable and therefore could be deleted.
- 4.9: agreed, the proposed conditions address the previously expressed concerns of the MPA.
- 4.10: it is agreed that conditions 5 and 6 are both reasonable and enforceable, to control the outward effects of continued operations at High Close Quarry.

- 4.11: it is agreed that conditions 7 and 8 are acceptable. It is unclear what the implications of 'broadly acceptable' are and it is assumed that the condition can be imposed on any future grant of modern working conditions.
- 4.12: is agreed in respect of controlling blasting activities.
- 4.13: all conditions are agreed. In respect of the proposed condition, whilst the principle of such a condition is acceptable the Appellant is concerned that it is ambiguous and imprecise in requiring "the written consent of the local planning authority". The trigger event should be more precisely worded and reference made to the Mineral Planning Authority.
- 4.14 – 4.18: it is agreed that conditions 14 – 27 are acceptable, save for condition 23. The Council expresses doubt about this condition but it is not explained why. The Appellant is therefore unable to offer further comment.
- 4.19: raises some concerns. The Historic Environment Officer's (HEO) comments are available at Appendix 8. The HEO is evidently satisfied with the baseline information provided when stating:

  "I agree with the ES that these remains should be subject to a programme of archaeological investigation and recording in advance of development. This archaeological work can be secured through the inclusion of two conditions in any planning consent that may be granted and I will be able to recommend suitable wording for the conditions upon the resolution of the issue outlined below."

The HEO's concerns as expressed in the preceding paragraph relate to the "large area of tree planting located to the south and east of the intended extraction area". Whilst not in agreement with the position adopted, the Appellant did in October 2023 make it known to the MPA that revisions to the planting extent could and would be accommodated. This was prior to the MPA changing fundamentally its view of the ROMP application and status of the relevant planning permission.

Landscape planting is not an act of development and in any case the precise location and extent of planting could reasonably be resolved by way of a planning condition, with the relevant trigger event being prior to works to prepare the ground for any landscape planting (or similar). The conflict between landscape planting of future biodiversity value and the disturbance of potential below ground archaeology is a matter for the decision maker to consider in the planning balance.

The Appellant's position is that the matter can thereafter be straightforwardly resolved through the use of appropriate planning conditions to avoid, mitigate or compensate for effects.

- 4.20: the condition is agreed in principle and the Appellant can accept the proposed wording, which is a revision to that used widely by the former Cumbria County Council when determining minerals planning applications.
- 4.21: it is agreed that the highway authority is not concerned about vehicle movements, or the volume of traffic as proposed. In relation to the concerns expressed about visibility splays it was agreed with the MPA in December 2023 that this additional information would be submitted pursuant to an updated revised vehicular access to be lodged

pursuant to the Town and Country Planning regime. This would offer an alternative to the originally consented access (consent CA.49) that would be preferable in terms of both highway safety and reduced amenity impacts. Since this time the MPA has fundamentally changed its position; however, the Appellant has nonetheless prepared and submitted this application.

30. The Parish Council representations consider the prospect of the Appellant adhering to the original conditions attached to CA.49 (paragraph 5.27.7) going forward. The conditions could be complied with or legitimately varied through existing separate planning legislation, but the Parish Council's point exposes its failure to understand the ROMP process which concerns the agreement to a new set of modern conditions prior to working continuing.

31. We do not understand why the Parish Council suggests that the Appeal does not include proposed conditions. It does. They are based on and have continually tracked the substantial environmental information which is now before the Inspector.

THE APPELLANTS RIGHTS

32. Plumbland Parish Council has correctly identified that Thomas Armstrong (Aggregates) Limited is the landowning interest. Nothing turns on this.

COMPENSATION

33. There is no compensation point, either in the application or the appeal.

THE ACCESS APPLICATION

34. With regard to the subsequently withdrawn planning application for an improved vehicular access, this application was withdrawn in December 2023 following agreement with the MPA that the green area was an extant relevant planning permission and could be the subject of a ROMP application. It should be noted that, following the MPA's most recent and fundamental change in position of 22nd October 2024, it has become necessary to re-submit this application and abandon all work pursuant to a revised green area only ROMP submission. This decision was taken by the Appellant in the context of the appeal subject to this statement having already been lodged. This is a reasonable and rational course of action for the Appellant to take.

35. The circumstances of the withdrawn vehicular access were discussed and agreed with Cumberland Council prior to its own change in opinion in respect of planning permission CA.49 as formally confirmed in October 2024. The Appellant's intention was detailed in a letter to Cumberland Council in December 2023; circumstances subsequently changed significantly and the Appellant was compelled to respond to these circumstances.

HIGH CLOSE FARMHOUSE

36. There is a point made by the Parish Council about the EIA and the farm house. The Mineral Planning Authority is content with the environmental information provided in support of the application. There is no outstanding request for further environmental information.

OTHER REPRESENTATIONS

37. A number of other interested party representations have been received and reviewed by the Appellant. Many of the issues are raised repeatedly throughout the submissions in a consistent format. Other issues raised specific to the proposals but not exhaustively include operational effects, impacts arising from operations, the gas pipeline intersecting the site and the nature of the proposed scheme or the planning consent.

38. The issues are addressed by the ROMP submissions and supporting environmental information including those relating to the air quality assessment and impacts upon proximate sensitive receipts.

39. Northern Gas Networks has again objected to the proposals, despite the fact its concerns have been previously addressed as detailed in the revised scheme and supporting environmental information. This is considered to be an oversight by the most recent respondent. Documentary evidence as to Northern Gas' current position (which is that a common position can be found with sufficient standoff) is already before the Inspector.

End.