ROMP APPEAL BY THOMAS ARMSTRONG (AGGREGATES) LIMITED
SITE AT HIGH CLOSE QUARRY, HIGH CLOSE FARM, PLUMBLAND, ASPATRIA, CA7 2HF
APPEAL REFERENCE: APP/ROMP/24/3

COUNCIL'S FINAL COMMENTS, etc.

Comments on/submissions in reply to the Appellant's Pre-Inquiry Statement and Submissions of 4th December 2024

1. Nothing contained in the Pre-Inquiry Statement of the Appellant submitted by Stephenson Halliday ("SH") causes the Council to doubt in any way the correctness of the position it has adopted in respect of the question which is central to this case, that is, whether there is a relevant planning permission in existence which would allow the appeal to proceed. There was no valid planning permission in existence in this case, and thus no relevant planning permission, when the ROMP Application was made for the reasons set out in the legal submission of 29th October 2024 appended to the Council's Pre-Inquiry statement.

2. SH had not had the advantage of considering the Council's Pre-Inquiry Statement when theirs was prepared so it is not surprising that their Pre-Inquiry Statement does not grapple with the legal submission of 29th October 2024 on which the Council relies.

3. In setting out the Appellant's case on whether there is a valid planning permission SH's reasoning is flawed. Their Pre-Inquiry Statement essentially seeks to argue, on the basis of the decision in *G. Hamilton (Tullochgribban Mains) Limited v The Highland Council*[1], that the inclusion of High Close Quarry in the Council's 1996 List is determinative of the question of whether the 1954 Permission is valid or not. That argument fails to take account of the relevant case law, namely, *R v Oldham MBC ex*

[1] [2012] UKSC 31.

parte Foster[2] and *Payne v Caerphilly County Borough Council*[3], which was set out in the Council's legal submission of 29th October 2024 and which was referred to with approval in the lower Scottish Courts in *Tullochgribban Mains* as that case proceeded through the legal system until reaching the Supreme Court. *Foster* and *Payne* explain why it is that the question of whether a permission continues to have validity falls for consideration at the time when a ROMP application is made (stage 2).

4. In fact, *Tullochgribban Mains* reinforces the position just set out because of the authoritative statement made in it by the Supreme Court that the listing stage (stage 1) is, in contradistinction to the ROMP application stage (stage 2), "*administrative and preliminary in nature."*[4] SH overlook the significance of this point.

5. In responding to the Council's case, SH correctly recognise that *Lafarge*[5] is an important element in the Council's case but fail to properly address how that case bears on the present, wrongly asserting that there are legislative provisions (in the present case) which *Lafarge* does not address and then proceeding to introduce the red herring of outline permission (which concerns, and has only ever concerned, built development alone) on the basis of the equally mistaken assertion that the Council's case is based on treating the 1954 Permission as an outline permission. That is not how the Council's case is based.

6. The Council's case is, and always has been, that the 1954 Permission in respect of the blue area was only an *"in principle"* grant and not thereby (in accordance with *Lafarge*) a relevant permission unless and until it crystallised into authorisation for specific minerals development through the approval of details, that this (again in accordance with *Lafarge*) would involve discrete development attracting the statutory time limit for commencement of development and that the same has not been met. Far from it being the case (as SH would have it) that this would involve a strange reading of the 1954 Permission as involving two permissions, it is in fact the natural and obvious interpretation of it given that there were two spatially separate areas under it which

[2] [2000] Env. L.R. 395.
[3] [2003] EWCA Civ 71.
[4] [2012] UKSC 31 at [26].
[5] *La Farge Aggregates Ltd v Scottish Ministers* [2004] S.C. 524.

were the subject of entirely different forms of grant one being only in principle, and thus entirely non-specific, and the other being full.

7. In relation to the green area, SH seek to rely on the argument that, as the landfilled area did not extend to the whole of this area, leaving mineral reserves which could still be worked, this fact serves to defeat the Council's case that the 1954 Permission is now impossible of implementation here (or in respect of the whole permission area) in accordance with its terms under the *Pilkington*[6] principle as explained in *Hillside Parks Ltd v Snowdonia National Park Authority*[7]. That reliance is misplaced. The fact that mineral reserves have been left untouched in the Green Area is not the point. The way in which SH put matters, on the contrary, actually underlines the Council's case because they found on the assertion of the possibility of the continued working of High Close Quarry when there is no longer in existence any quarry at all which could continue to be worked.

8. The Submissions dated 4th December 2024 made on behalf of the Appellant deal only with the *Pilkington* principle. It is stated in this document that other submissions in the Council's pre-inquiry statement of case (presumably referring here to the legal submission appended thereto) should not be taken to be accepted and that they are not in fact accepted. Given that no further reasoning is advanced as to why these other submissions are not accepted, it not possible to say anything further here in response to that bare statement of non-acceptance.

9. The submission made that minerals development is substantially different to most forms of operational development may well be right but the conclusion which appears to be drawn from this - that *Hillside/Pilkington* is of more limited application in a minerals context such as the present compared to built development – appears to have little further relevance because what is then argued is not that the *Pilkington* principle is inapplicable to the present (minerals) case but the different point that it is not infringed.

[6] *Pilkington v Secretary of State for the Environment* [1973] 1 W.L.R. 1527.
[7] [2022] UKSC 30.

10. As for the point that the *Pilkington* principle is not concerned with compliance with planning conditions, this is only correct in one respect. The point is correct to the extent that the principle does not concern itself with whether implementation, or further implementation, of one permission would be in breach of the conditions of another implemented permission. In this regard, however, it has never been any part of the Council's *Pilkington* case that the 1954 Permission cannot now be relied on because this would breach any conditions of the later landfill permission. The point is not correct to the extent that it suggests that conditions of a permission sought to be relied upon are not relevant to the issue of whether development carried out under another permission has made it impossible to carry out the first permission *"in accordance with its terms"*, a formulation of the *Pilkington* principle adopted in *Hillside*[8]. In this regard, the conditions of the first permission are clearly relevant because they are part of the terms of that permission.

11. The suggestion that there is some circularity in the Council's position in respect of conditions on the basis that it is the task of the ROMP Application to review conditions is mistaken. If it is concluded that the 1954 Permission is impossible of further implementation according to its terms (including, in this respect, its conditions), there is then no valid permission in existence and nothing on which a review of conditions can bite.

12. Beyond the points identified, and answered, above the Submissions of 4th December 2024 do not advance the Appellants' case in any different fashion from that set out in SH's Pre-Inquiry Statement. The point that they make that there are still mineral reserves in the Green Area unaffected by the landfill permission has already been dealt with in paragraph 7 above.

Comments on Plumbland Parish Council's Submission of 24th October 2024 and Second Submission of 2nd December 2024

13. In the light of Plumbland Parish Council's Second Submission of 2nd December 2024, the Council is content for the present to limit its comments here to the fact that, on the

[8] [2022] UKSC 30 at [43].

central issue in this case concerning the continued validity of the 1954 Permission, Plumbland Parish Council agree with the Council, for substantially the same reasons, that the 1954 Permission is not now valid and thus is no longer a relevant planning permission on which any ROMP application could be made and appeal thereafter follow. In the light of that the Council considers that it is presently unnecessary to comment further on the Submission of Plumbland Parish Council of 24th October 2024.

Other Interested Party Representations

14. The Council comments only insofar as to confirm –

14.1 There is a new application for vehicular access to the Site, which is going through the process of validation, and

14.2 The Council disagrees with the submission that the Green Area was not included in the 1996 List.