IN THE MATTER OF:

HIGH CLOSE QUARRY, PLUMBLAND, ASPATRIA, CUMBRIA

-and-

PLUMBLAND PARISH COUNCIL

-and-

REVIEW OF OLD MINERALS PLANNING PERMISSIONS

ADVICE

Introduction

1. I am asked to advise Plumbland Parish Council ("the parish council") as to certain aspects of the regime for the Review of Old Minerals Planning Permissions ("ROMP") established by the Environment Act 1995 as it relates to High Close Quarry ("the quarry"), the site of which lies within their administrative area.

Background

2. The limited background necessary for the purposes of this Advice is as follows:

    a. Planning permission was granted in 1954 for "*continued working of limestone*" at the quarry.

    b. Active quarrying operations at the site ceased in the late 1950s.

c. The Environment Act 1995 established a regime for reviewing old minerals permissions with a view to imposing modern environmental conditions upon those permissions, in order to secure the continued future working of such sites in a manner which corresponded with up-to-date environmental standards.

d. The ROMP process is set out in Schedules 13 and 14 to the 1995 Act. The first stage of the process is for each Minerals Planning Authority (in this case Cumbria County Council, ("Cumbria")) to produce a list of the so-called Phase 1 and Phase 2 active sites and the dormant Sites. The First List of sites, produced by Cumbria in January 1996 and revised in May 1996, listed the quarry as a dormant site.

e. It is settled law that the process of listing (which allows for a short period in which appeals against the contents of the list may be made, a period which has long since elapsed) is to be regarded as a self-contained code, in respect of which no subsequent challenge is permitted (see *Stancliffe Stone Ltd –v- Peak District National Park Authority* [2004] EWHC 1475 (QB).

f. Pursuant to the statutory scheme set out in Schedule 13, in 2019 an application was made (purportedly) by the owners of the quarry for the imposition of modern conditions on the 1954 permission, so as to allow working to begin again at the quarry. That application has not yet been determined.

g. On 31 May 2019 part of the quarry site (including a farmhouse) was sold to [redacted] The contract by which that sale was undertaken included clauses by which the purchasers were restrained from making any objections to the ROMP application or to subsequent operations.

3. On the basis of the situation outlined above (which is dealt with in brief outline only), my advice is sought on two discrete matters, namely:

a. Whether the imposition of modern conditions on the 1954 permission, pursuant to the application made to Cumbria, could give rise to any entitlement to compensation. Those instructing me are concerned that Cumbria may have the belief that compensation may be payable if it imposes restrictive conditions upon the 1954 permission. This concern is heightened by the fact that the Cumbria Minerals and Waste Local Plan 2015 to 2030 provides at paragraph 15.23 that:

"*The Act provides for compensation to be payable if this restriction of working rights prejudices the viability or asset value of the site to an "unreasonable degree". The detail or requirements of a restoration plan are separate from the restriction of working rights; so if asset value of a mineral development drops due to a justifiable change in restoration plan, then compensation would not be payable*."

It will be noted that there is no distinction drawn between active and dormant sites.

b. Whether, notwithstanding the covenants entered into by the new owners of the farmhouse, Cumbria is still required to consider impacts on the residential amenity of occupiers of the farmhouse when deciding what new conditions to impose.

4. I will deal with these two matters in turn.

Compensation

5. The position with respect to compensation is entirely clear from the plain words of the statute; compensation is not payable in respect of the conditions imposed upon a dormant site, even if it be the case that they prejudice the viability of the operation of the site under those modern conditions. To the extent that Cumbria have had any belief the compensation might be payable, they are entirely wrong.

6. This is due to the clear words of the statute which deal with a potential liability for compensation. The only basis for compensation being payable springs from paragraph 15 of Schedule 13 which provides, so far as material, as follows:

"(1) This paragraph applies in a case where –
(a) an application is made under paragraph 9 above [the paragraph under which applications for modern conditions are made] in respect of an active Phase I or II site is finally determined; and
(b) the requirements of either sub- paragraph (2) or (3) below are satisfied."

[Sub-paragraphs (2) and (3) set out a regime whereby either the relevant Minerals Planning Authority or the Secretary of State, as appropriate) must provide a

statement if they believe that the modern conditions to be imposed that would unreasonably affect the viability of the mining operations.]

7. It is entirely clear from the statutory words that an entitlement to compensation can only arise when applications for modern conditions on *active* sites are determined. There is no mention of dormant sites. The entitlement to compensation simply does not arise when conditions are imposed on *dormant* sites. There is simply no possibility of compensation being payable with respect to conditions imposed on a dormant site.

8. It is also to be noted that national Minerals Planning Guidance is in the following terms:

   "*Is compensation payable for imposing updated planning conditions on dormant sites?*
   Compensation is not payable for imposing updated planning conditions on dormant sites.

   Paragraph: 187 Reference ID: 27-187-20140306
   Revision date: 06 03 2014"

9. Central government guidance is thus clear on the matter.

Consideration of amenity effects despite covenant

10. In my view, there is no doubt that Cumbria are under an obligation to consider the effects of the ROMP scheme on the amenity of the residents of the farmhouse, irrespective of whether or not those residents make representations to them.

11. As with any decision relating to planning, Cumbria are required to consider all material planning considerations when coming to their view. Considerations of

residential amenity, such as noise, dust and visual impact are without any doubt material planning considerations. The duty resting upon Cumbria to consider them is wholly unaffected by whether any particular person makes representations or objections with respect to those matters.

12. Moreover, Cumbria are under a duty to consider any material planning matters which are brought to their attention by representations from consultees or any other person interested in the application. Representations can perfectly properly relate to the effect on persons other than the representor. Thus, any other person making representations to Cumbria about the proposed conditions would be entitled to raise the impact upon the farmhouse and Cumbria would be obliged to consider those representations.

13. However, the principal overriding obligation of Cumbria to consider the effect on the amenity of the residents of the farmhouse would exist even if no representations at all were made about those matters. This is a simple and central tenet of planning decision-making.

14. Finally, this is EIA development, in respect of which no consent can lawfully be given until consideration has been given to all significant environmental effects. The effects on the human population (which necessarily include the residents of the farmhouse) are an integral part of the environmental effects. Accordingly, quite apart from the duty which arises in the normal consideration of an application, considered above, an entirely separate duty to consider the effects on the residents of the farmhouse exists due to the EIA Regulations.

15. I will happily advise on any further matter arising.

[redacted]

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