

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

Second Submission to Secretary of State

2 December 2024

1. **Introduction**

- 1.1. We are instructed by Plumbland Parish Council and respond on its behalf in respect of the Inspector's / PINS's Preliminary Note dated 8 November 2024 (WH C5) attaching the Legal Submissions made by [REDACTED] Counsel on behalf of Cumberland Council (the MPA) (WH C6).
- 1.2. For ease of reference we attach an updated schedule of appendices together with copies of the new appendices.
- 1.3. We make the following submissions.
 - 1.3.1. The Legal Submissions are in line with submissions that the Parish Council has been making for a number of years. Accordingly we agree with such submission subject to the comments below. The submissions as regards validity made both by the MPA and the Parish Council are compelling.
 - 1.3.2. The above appeal should never have been validated. PINS should revisit and redetermine its decision to validate the appeal.
 - 1.3.3. Appeal procedure
- 1.4. Please note that references in the below submissions are strictly without prejudice to our previous submissions as regards the identity of the applicant and appellants respectively.

2. **Cumberland Council's Legal Submissions**

- 2.1. The Parish Council has previously set out its own detailed submissions. A further copy of those submissions is attached hereto for ease of reference.
- 2.2. For the avoidance of doubt it is agreed that:
 - 2.2.1. There is no relevant planning permission. The 1954 Planning Permission is no longer valid.
 - 2.2.2. There is therefore no valid application nor appeal and there is nothing to determine.
- 2.3. We agree that a planning permission which is invalid when a ROMP application comes to be made does not amount to "a relevant planning permission" per R v Oldham MBC ex parte Foster¹ (WH D15).
- 2.4. We agree that there is no continuing validity if no permission is longer extant. As regards the relevance of the decision in Pilkington² (WH D11) we expressly raised this issue with the MPA in our letter of 26 February 2021 to the MPA. A copy is attached.
- 2.5. The Council's Legal Submission at paragraphs 19 and 20 properly addresses the distinction between the administrative nature of the initial decision to include a site in the 1996 List and any subsequent decision on determination of conditions pursuant to a ROMP application. Keene J's comments in that context are compelling.

¹ R v Oldham MBC ex parte Foster [2000] Env LR 395

² Pilkington v Secretary of State for the Environment [1973] 1 WLR 1527

- 2.6. Please note that we previously drew this point to the MPA's attention in our letter of 26 February 2021 (WH B15), albeit in the context of the Supreme Court decision in the Scottish case of *G Hamilton (Tullochgribban Mains) Ltd v Highland Council*³ (WH D14). We noted:

"...the context of a two stage process as recognised in the decision of the Supreme Court in G Hamilton (Tullochgribban Mains) Ltd v Highland Council and more fundamentally on the basis that whatever else the ROMP process may do, it cannot of itself revitalise a spent permission. Notwithstanding that the first stage administrative decision includes a site in the first stage list, the Tullochgribban case indicates that it is an administrative process. The planning judgement and assessment is a subsequent phase. In any event if the planning permission to which that initial listing decision relates has already expired then the ROMP process can go no further."

- 2.7. Moreover, the robustness of the judgement as set out in the words of Lord Walker should be noted. He concludes that the lower courts with whom the Supreme Court agreed were "*plainly correct*" and that:

*"...once the general scheme of Schedule 9 of the 1997 Act is understood the first point is really quite a short one. The procedure at what the Lord Justice Clerk called Stage 1 is administrative and preliminary in nature. It involves the identification of sites and the setting of an order of priority for Stage 2 (with activity on a dormant site being frozen in the meantime). By contrast Stage 2, which is initiated in every case by a paragraph 9 application, requires decisions calling for planning judgement."*⁴

- 2.8. Notwithstanding this is a Scottish case, it is a decision of the Supreme Court determined on the basis of statute which is in all material respects identical to the position in England. It is strongly persuasive in its treatment of the distinction between the first administrative, listing stage and the second, determinative planning judgement stage. It is wholly consistent with the MPA's submission that it may when presented with a Schedule 13 ROMP application consider the validity of any claimed relevant planning permission.
- 2.9. It should be noted that Burnett's letter of 13 May 2024 (WH B16) misunderstands the nature of the First Stage process and subsequent ROMP application. Inclusion in the First List is not determinative of there being a relevant planning permission.
- 2.10. As regards the Blue Area validity, we brought the Lafarge⁵ case to the MPA's attention by letter of 12 May 2023 (WH B1) and have addressed this in detail in our submission and its appendices. The MPA's submissions are correct.
- 2.11. Moreover, we note with interest the statement at paragraph 28 of the MPA's Legal Submissions that the MPA's 12 January 2024 report reflecting its position on the Blue Area was provided contemporaneously to the Appellant. The Appellant's submission to PINS is thus materially and significantly misleading as further noted below.
- 2.12. We also agree with the MPA's submission as regards Green Area validity, save that we have made additional detailed points also supporting the same conclusion in our

³ *G Hamilton (Tullochgribban Mains) Limited v The Highland Council and another (Scotland)* [2012] UKSC 31

⁴ *Ibid* paragraph 26

⁵ *Lafarge Aggregates Ltd v Scottish Ministers* [2004] SC 524

previous submission. We also note Burnett's acknowledgement in its letter of 19 April 2024 that " a new excavation at another location within the area edged green was not permitted". (WH B11)

- 2.13. Notwithstanding the authority that a right of appeal to the Secretary of State may exist in respect of an application which an LPA has declared invalid, per Ex parte Bath and North East Somerset⁶ (WH D16), where it is clear that no lawful decision can be made, per Maximus Networks⁷ (WH D17), then the Secretary of State is entitled to decline to determine such appeal.
- 2.14. However, where the matter at hand is a nullity then no right of appeal arises, per Williams v Vale of Glamorgan⁸ (WH D18).
- 2.15. High Close Quarry is distinct from Maximus given that the "relevant planning permission" has been rehearsed in detail between the parties for a considerable time and the Inspector already has before him detailed submissions. And the statutory requirement is clear given the mandatory requirements of paragraph 9(1) Schedule 13 of the Environment Act .
- 2.16. PINS and the Inspector have a sufficiency of information regarding the relevant planning permission which can be distilled as follows:
 - 2.16.1. The Blue Land in principle permission is not a relevant planning permission: per Lafarge and the MPA's submissions.
 - 2.16.2. The Green Area detailed permission is spent and no longer extant.
 - 2.16.2.1. The continued working of the quarry void has ended.
 - 2.16.2.2. In addition, the appellant's solicitors have acknowledged that "a new excavation at another location within the area edged green was not permitted" by the 1954 Planning Permission.
- 2.17. In short, there is nothing capable of determination and it will be a waste of time and resources to proceed to an inquiry dealing with the issue of conditions.
- 2.18. Given the significance of this application to Plumland, the Parish Council would wish to participate in any proceedings. That will necessitate further Legal representation and Planning and Acoustic evidence. On the clear basis of the law as submitted by both the MPA and the Parish Council that would be a wholly unnecessary and avoidable cost and burden.
- 2.19. The submissions on validity are compelling. They are based on clear authority and judicial decision. There is therefore a very real likelihood that the Secretary of State will conclude that the application / appeal is invalid. In such circumstances a preliminary determination as regards the existence or otherwise of a relevant planning permission is the most appropriate way forward.

⁶ R v Secretary of state for the Environment, Transport and the Regions Ex p Bath and North East Somerset DC [1999] 1 WLR 1759

⁷ Maximus Networks Ltd v Secretary of State for Communities and Local Government 2019 PTSR 312

⁸ Williams v Vale of Glamorgan [2013] PAD 43

2.20. Were the appeal to proceed in whole, then on what basis would any consideration of conditions take place? Would it be assumed there was a relevant planning permission in whole? Or in part? And if so, what part?

2.21. This is therefore both a matter entirely suited to preliminary determination of the relevant planning permission issue, and indeed it is necessary to do so.

3. **PINS's determination of validity**

3.1. We understand that PINS has concluded that the appeal is valid purely on the basis of Stephenson Halliday's Statement of Case and accompanying documents.

3.2. The Statement of Case states: "*our client has not as yet been formally told what the Council's position actually is with regard to the permission. Therefore we have been left with no choice but to appeal for non-determination..*"

3.3. This is materially inaccurate. Indeed it could be said that PINS has been misled. The MPA's Legal Submissions states categorically that the MPA's 12 January 2024 report (WH C2) reflecting its position on the Blue Area was provided contemporaneously to the Appellant.

3.4. Notwithstanding it is acknowledged that the MPA's position as regards the Green Area was not formally confirmed until 21 October 2024 (WH C2), the impression conveyed by the Statement of Case is fundamentally misleading.

3.5. The Parish Council has been engaged in extensive correspondence with the MPA, much of which has been shared with the Appellant's solicitors and planning consultant. For the Statement of Case to remove or airbrush out both the MPA's detailed decision of 12 January 2024 and the substance of the Parish Council's involvement is a knowing act of revisionism. One may reasonably suppose that this was for the purposes of influencing the Secretary of State's approach.

3.6. Moreover, at one and the same time, it is apparent from the Statement of Case, given its references to meetings with the MPA for example, that that the Appellant is well aware of the points taken by the MPA. And yet in its Statement of Case it has made no effort to adduce legal submissions of its own. That omission is self-serving to the extent that it seeks to avoid raising matters that go to the invalidity of the application and appeal.

3.7. Paragraph 6.1 of the Planning Appeals Procedural Guide states that "*once an appeal has been submitted, we will check whether it is valid*". We request that PINS disclose what checks and validation it carried out and provide copies of all relevant documentation (other than Stephenson Halliday's Statement of Case and accompanying documents) including correspondence, file notes, telephone notes, the decision document itself and otherwise.

3.8. In any event it is readily apparent that in reaching its decision on validity that PINS has not had regard to all material considerations. Given what PINS now knows, there is a duty on it to revisit its decision on validation. We look forward to PINS confirmation that it will do so.

4. **Appeal Procedure**

4.1. The application / appeal is invalid. Moreover it is more akin to a nullity and not capable of appeal.

- 4.2. It is readily apparent that PINS did not have before it all the information it needed to come to a view on validity. That initial step in the administration of the appeal is therefore wanting. PINS now has that information, and should reassess the validity of the appeal.
- 4.3. In any event we agree with the MPA's Legal Submissions that the question of the whether a valid planning permission is in place be determined as a preliminary issue.



Ward Hadaway LLP

2 December 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 [REDACTED] Senior Planning Officer, Cumbria County Council
WH A8	Email 25 July 2017 [REDACTED] 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 Ward Hadaway to , Chief Legal Officer, Cumberland Council
WH B2	Email 30 June 2023 , Solicitor, Cumberland Council to , Ward Hadaway
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 , Ward Hadaway
WH B6	Letter 15 November 2023 , Planning Casework Unit, Department for Levelling Up, Housing and Communities to , Plumbland Parish Council
WH B7	Letter 6 December 2023 , to Minerals and Waste Team, Cumberland Council
WH B8	Letter 15 February 2024 , Ward Hadaway to , Senior Lawyer, Cumberland Council
WH B9	Email 7 March 2024 Senior Lawyer, Cumberland Council to , Ward Hadaway
WH B10	Letter 21 March 2024 , Ward Hadaway 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 , Ward Hadaway to , Senior Lawyer, Cumberland Council
WH B13	Email 17 July 2023 , Ward Hadaway to , 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

WH B15	Letter 26 February 2021 , Ward Hadaway LLP to Cumbria County Council
WH B16	Letter 13 May 2024 Burnetts to Cumberland Council

(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
WH C5	Inspector's / PINS's Preliminary Note dated 8 November 2024
WH C6	Legal Submissions made by of Counsel on behalf of Cumberland Council dated 29 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)
WH D14	G Hamilton (Tullochgribban Mains) Limited v The Highland Council and another (Scotland) [2012] UKSC 31
WH D15	R v Oldham MBC ex parte Foster [2000] Env LR 395
WH D16	R v Secretary of state for the Environment, Transport and the Regions Ex p Bath and North East Somerset DC [1999] 1 WLR 1759
WH D17	Maximus Networks Ltd v Secretary of State for Communities and Local Government 2019 PTSR 312
WH D18	Williams v Vale of Glamorgan [2013] PAD 43

(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