

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

Third Submission to Secretary of State

19 December 2024

1. **Introduction**

- 1.1. We are instructed by Plumbland Parish Council (the Parish Council) and respond on its behalf in respect of the Pre-Inquiry Statement of the Appellant (WH C7).
- 1.2. This written submission is our Third Submission to the Secretary of State and should be read alongside and in addition to our submission dated 24 October 2024 (First Submission) and submission dated 2 December 2024 (our Second Submission). For ease of reference we attach an updated schedule of appendices together with a copy of the new appendix (the Pre-Inquiry Statement of the Appellant).
- 1.3. Further to our previous Submissions, we make the following additional submissions:
 - 1.3.1. The Pre-Inquiry Statement of the Appellant is materially incorrect as regards the identity of the applicant.
 - 1.3.2. The Parish Council will respond in due course as regards the substance of the proposed new conditions, strictly without prejudice to our previous submissions as regards the validity of the application/appeal.

2. **Identity of the applicant/appellant**

- 2.1. As previously submitted the right to submit a ROMP application under Schedule 13 of the Environment Act 1995 is limited in paragraph 9(1) of that Schedule to the Owner or a person who is entitled to an interest in a mineral (WH D2). The 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*". No other person is entitled to make an application.
- 2.2. Stephenson Halliday's Pre-Inquiry Statement of the Appellant states at paragraph 30 that the application was submitted by Thomas Armstrong (Aggregates) Limited. This is plainly incorrect.
- 2.3. Furthermore, paragraphs 12 and 26 of the Pre-Inquiry Statement of the Appellant also incorrectly refer to Thomas Armstrong Limited as the applicant and owner of the relevant land.
- 2.4. The application was submitted in the name of Thomas Armstrong Limited, as can be seen by Section 6 of the application form which deals with Site Ownership (see the application form dated 28 August 2019 (WH C1)). As previously submitted, we have seen no evidence, nor has any been provided by either the MPA or the Appellant, that this has been amended or "superseded" which is the terminology applied by the MPA where documentation has been updated on its website.
- 2.5. The applicant is therefore clearly stated to be Thomas Armstrong Limited. However, Thomas Armstrong Limited is not and never has been the owner of the relevant land.
- 2.6. We do however wish to make one correction. Search results from Companies House for Thomas Armstrong Limited (WH E3) reveal a legal entity with company number 00244751 and a registered office address of Workington Road, Flimby, Maryport, Cumbria CA15 8RY. This company changed its name to Thomas Armstrong (Holdings) Limited in June 1988. We would therefore like to correct our statement in paragraph 6.12 of our First Submission that a company named Thomas Armstrong Limited has never existed. However it remains the fact that Thomas Armstrong Limited was not at

any material time for the purposes of the present ROMP application an owner of the relevant land or minerals.

- 2.7. The land at High Close Quarry was purchased on 23 August 2016 by Thomas Armstrong (Aggregates) Limited. As a result it is that company, not Thomas Armstrong Limited, that is the owner of the relevant land.
- 2.8. Thomas Armstrong (Aggregates) Limited, even if it meets the criteria as an Owner, has no standing to submit the appeal as the application was submitted in the name of a separate legal entity, Thomas Armstrong Limited. Furthermore, as the application could not have been made by Thomas Armstrong Limited, there is no valid application upon which an appeal can be based. Indeed the application is so flawed as to be a nullity.

3. **The proposed conditions**

- 3.1. Paragraphs 70 to 75 of the Pre-Inquiry Statement of the Appellant address the proposed new planning conditions to be imposed on High Close Quarry.
- 3.2. The Appellant's proposed planning conditions were sent to us on 5 December 2024. The Parish Council will respond in due course as regards their substance, without prejudice as to validity of the application/appeal.
- 3.3. The Parish Council has nonetheless previously submitted a detailed report dated 19 June by Apex Acoustics in respect of noise impacts. A copy of the report (WH C8) and covering letter from Ward Hadaway dated 30 June (WH B17) is attached herewith.


4. **Concept of "in principle" or "outline" permission**

- 4.1. The submission by Stephenson Halliday characterises permission CA49 as a phased permission, not containing an "outline" element. That is incorrect. It is clearly a permission comprising two distinct elements: one detailed (the Green Area); one in principle only (the Blue Area).
- 4.2. The Blue Area only ever benefited from an "in principle" permission, not a detailed permission. As was held in *Lafarge Aggregates Ltd v Scottish Ministers*¹ (WH D6) an "in principle" consent does not satisfy the definition of a relevant planning permission because winning and working in such area has never been authorised.

5. **Other submissions**

- 5.1. We request that our First Submission, as complemented by our Second and Third Submissions, be taken to represent the Pre-Inquiry Statement on behalf of the Parish council.
- 5.2. 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.

¹ *Lafarge Aggregates Ltd v Scottish Ministers* 2004 SC 524



Ward Hadaway LLP

19 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 _____, Stephenson Halliday, 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
WH B17	Letter 30 June 2023 , Ward Hadaway LLP to Cumbria County 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
WH C7	Pre-Inquiry Statement of the Appellant
WH C8	Noise Report by Apex Acoustics dated 19 June 2023

(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