Planning Inspectorate

Appeal Decision

Inquiry held on 1 & 2 April 2025

Site visit made on 3 April 2025

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2025

Appeal Ref: APP/ROMP/24/3
Land at B5301 Parsonby Brow, forming High Close Quarry, High Close Farm, Plumbland, Cumbria CA7 2HF

- The appeal is made under paragraph 11(1) of Schedule 13 to the Environment Act 1995 and Regulation 55 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 against a failure to give notice within the prescribed period of a decision on an application for the determination of new conditions for the dormant planning permission Reference CA.49, incorporating an area for plant, stockpiling and storage
- The appeal is lodged by Thomas Armstrong (Aggregates) Limited against Cumberland Council.
- The application Ref is 2/19/9010.
- The development permitted under permission CA.49 was the continued working of High Close Quarry, Parsonby, Aspatria.

Decision

1. The appeal is dismissed.

Preliminary matters

2. At the Inquiry, the first main issue identified below was explored through legal submissions, while the second was discussed in a round-table format.

3. Two separate applications for costs have been made against Cumberland Council – one by the appellant and the other by Plumbland Parish Council (the Parish Council). These are the subject of separate decisions.

Legal context and Main Issues

4. The *Environment Act 1995* (the 95 Act) introduced a specific approach concerning planning permissions for minerals development that had been granted after June 1948 and had been subsequently implemented, but where no minerals development had been carried out to any substantial extent at any time between February 1982 and June 1995. These are referred to as relevant planning permissions. It said minerals development relating to any such permission could not resume until an application to review the conditions on that permission had been made to the minerals planning authority (the MPA), and the MPA had determined the new conditions to which the planning permission was now to be subject. An application for such a review was known as a Review of an Old Mineral Planning Permission (a ROMP) and the purpose of this process was broadly to ensure these old permissions, going forward, were subject to conditions that achieved modern environmental standards. The effect of a determination under this process was to update the original relevant planning permission. It did not create a new planning permission or take away any extant one that still exists.

5. As a preparation for this process, the 95 Act required the MPA to draw up a list (known as the First List) of minerals sites in its area, being sites to which a relevant planning permission relates. ROMP applications can then only be forthcoming for sites on that list.

6. In the light of the above, to make a ROMP application the site needs to be on the First List and there needs to be a relevant planning permission.

7. Cumberland Council is currently the MPA for the area that includes the appeal site. From now on in my decision I shall use that acronym to refer to it or its predecessors.

8. Given this legal context, the main issues in this appeal are

   a) whether a ROMP application can be made,

   and, if it can,

   b) what conditions should be imposed.

Reasons

Background

9. In October 1948 planning application CA.49 was submitted for what was described as

> *the continued working of High Close Quarry, Parsonby, Aspatria*

with planning permission for the development being duly granted in 1954. It concerned a roughly oval site of about 50ha (the application site), which was on pastureland to the south-west of the village of Plumbland. Within this boundary the plan attached to the application showed an irregularly shaped area edged in green (the Green Area), some 10ha in size, which ran diagonally across the site from the north-east to the south-west. The notation on the plan also showed a quarry already present at the north-eastern end of this Green Area.

10. Permission CA.49 was subject to 8 conditions. Conditions 1 and 2 said

> *1) Excavations shall be limited to the area edged green on the attached plan.*
>
> *2) Permission is given in principle for quarrying to be carried out within the area edged blue on the attached plan, but quarrying shall not commence until full details have been submitted to and approved by the Local Planning Authority, who reserve the right to impose reasonable conditions.*

Condition 1 related to the Green Area described above. Moreover, the MPA and the appellant to this current appeal accepted that, while the entire extent of permission CA.49 was edged in blue (and so included the Green Area), Condition 2 concerned all the application site minus the Green Area. This I shall refer to as the Blue Area.

11. In relation to activity within the Green Area, I understand the quarry was being worked when application CA.49 was being considered (and in fact had been worked by then for some 50 years), and so the permission was implemented

immediately by the on-going operations. Working there ceased in about 1956. By that time the footprint of the quarry had more or less doubled from what is shown on the plan attached to permission CA.49, having extended in a south-westerly direction but nonetheless remaining within the Green Area. The quarry was then left as a void until, following the further grant of planning permission in 1976, it was used as a landfill tip for domestic, trade and non-toxic industrial refuse (the landfill permission). This landfill permission was defined by a red line that was entirely within the Green Area, and it covered about 40-50% of that area, tightly following what appeared to be the extent of the quarry void at that time. I shall refer to the land bounded by this red line as the Red Area.

12. By the early 1990s landfill activities had finished, the quarry void had been filled, and the land had been restored to agricultural usage. Since then, the Red Area has provided grazing in conjunction with the adjacent fields. An access track and some remnants of structures remain at the northern end of the application site, while variations in vegetation reflect differences in drainage between the infilled quarry and the fields around, but otherwise there is now little apparent on the surface to indicate the presence of the quarry void, the landfill operations or the activities associated with either of these uses.

13. Turning to the Blue Area, since the grant of permission CA.49 none of the *'full details'* required by Condition 2 in connection with that part of the application site have been submitted to the MPA.

14. High Close Quarry, as defined by the application site of permission CA.49, has been included on the First List since at least May 1996.

Issue 1: Whether a ROMP application can be made

15. A number of reasons were put forward by the MPA and the Parish Council (sometimes separately and sometimes jointly) as to why a ROMP application could not be made, each of which I will examine in turn.

a) The site did not have planning permission for minerals development

16. As stated above, a site can only be considered under the ROMP procedure if it is subject to a relevant planning permission. In the 95 Act such a permission is said to be

> *'any planning permission, other than an old mining permission or a planning permission granted by development order, granted after 30 June 1948 for minerals development.'* [1]

Insofar as is relevant to this appeal, it defines minerals development as including

> *'development consisting of the winning and working of minerals'.*[2]

It was part of the Parish Council's case that the description of development subject of permission CA.49 only referred to the *'working'* of the quarry, so it did not authorise the winning of minerals. Consequently, as the definition in the 95 Act said minerals development consisted of both elements, the permission fell outside of that definition, and so, by extension, outside of the definition of a relevant planning permission.

[1] The *Environment Act 1995* schedule 13 para 1
[2] Ibid section 96(6)

17. However, it was accepted that permission CA.49 allowed the enlarging of the quarry that was present when the permission was granted, as is shown by Condition 1 expressly authorising *'excavations'* in the Green Area. To my mind such actions go beyond just working of a mineral, and also include its winning. Moreover, Condition 5 refers to *'the erection of buildings for use in connection with the winning and working of minerals under this permission',* thereby stating both winning and working were authorised under the decision. While the Parish Council said that condition concerned only the Blue Area, I see no reason why it should be interpreted in that way and should not be applied to all the land covered by the permission.

18. As such, to my mind it is clear that, despite its description of development, permission CA.49 authorised both the winning and the working of minerals. Consequently, I conclude the contention that the permission does not constitute minerals development is not a reason to find the application cannot be validly made.

b) The works now proposed were a departure from the development permitted

19. The *'continued'* working of the site found in the description of development is, to my mind, a reference to continuing the mineral working that had been taking place in the past, rather than committing to on-going activity into the future. Indeed at the Inquiry the Parish Council and the MPA accepted this should not be viewed as a reference to mineral working proceeding continuously once the permission had been granted, and the permission then lapsing whenever it stopped, and I agree.

20. It was further contended though that by describing it as the *'continued working of High Close Quarry'* the permission restricted any working only to the quarry void present at that time. As a result, while the void could be enlarged, working outside of that void, even elsewhere within the Green Area, was not authorised. That though is not a view I share. In my opinion the inclusion of '*High Close Quarry'* in the description is not a reference to the quarry void itself and so does not confine working to the void only. Rather, with its upper-case letters and it being followed by the settlement names of Parsonby and Aspatria, it refers to the address of the development, and so encompassed not only the void, but all associated and ancillary land outside of that void but within the site. This is supported by the fact that there is no other mention of the site address on the decision notice.

21. Accordingly, I conclude the contention that the permission confines the working of minerals to the void as it existed either in 1954, or when last worked in 1956, is not a reason to find the application cannot be validly made.

c) The quarry was not dormant but was disused by the time the permission for the landfill was considered

22. In the description of the landfill permission the site is described as a *'disused quarry'*. However, there is no provision in the legislation around ROMP applications that expressly discounts disused sites. Moreover, as the procedure, by its very nature, concerns minerals sites that could well have been unworked for many years, it is reasonable to expect such dormant operations could well appear disused or overgrown, and be devoid of buildings and other apparatus.

23. In an email in 2017 an MPA officer said that the Green Area had been '*worked out'*, but I am unaware of the basis for that view. Site notes from 1958 show another MPA officer was more cautious. They said the site had been abandoned, *'presumably as being uneconomic to work'* and while accepting that, statistically, reserves remained high, *'it seems that the economic limits have been reached'.* However, it does not follow that the quarry should now be necessarily considered as disused. Advances in technology or changes in economics could well mean the mineral remaining can now be viably extracted, which presumably is the reason why this current scheme is being promoted.

24. Accordingly, the state of the quarry between 1958 and the 1970s is not a reason to find the application cannot be validly made.

d) The applicant was not entitled to submit the application and the appellant was not entitled to pursue the appeal.

25. ROMP applications cannot be made by anyone. Rather, the 95 Act stipulates that they can only be submitted by either the owner of the land or by a person entitled to an interest in the mineral[3].

26. At the top of the application form for the ROMP application (dated August 2019) it said the applicant details were Mr Paul Armstrong with the Company name given as Thomas Armstrong. At the end of the application form, in the Declaration, the applicant was given as Thomas Armstrong Ltd, while the Planning Statement, which is also dated August 2019 and I assume accompanied the application, said it was prepared for Thomas Armstrong Aggregates Ltd.

27. There are therefore 3 different names given on the original submissions accompanying the ROMP application. I understand that there was a company called Thomas Armstrong (Aggregates) Ltd when the application was lodged, and that body is entitled to submit an application for a ROMP under the terms of schedule 13 paragraph 9 to the 95 Act. Consequently, as neither the owners nor a party having an interest in the mineral, companies called Thomas Armstrong or Thomas Armstrong Ltd were not entitled to submit the application, and in fact there was no company of either name in existence at that time.

28. Drifting between these 3 names was undoubtedly clumsy, especially given the explicit and precise stipulations around who could submit applications of this nature. Whilst the 2 names given on the application form may have been seen as a short-hand for the actual name of the company that was submitting the ROMP application, I accept there is no provision for such an approach to be taken.

29. Having said that, Thomas Armstrong (Aggregates) Ltd was also a name found on the application submissions (albeit without the parentheses). Furthermore, it was accepted that the application was lodged from within the family of companies of which Thomas Armstrong (Aggregates) Limited is a part, and it was not said that it could have been submitted by a company outside of that family. Therefore, despite the discrepancies that exist, I see no prejudice arising from considering Thomas Armstrong (Aggregates) Limited to be the applicant.

30. Accordingly I conclude that discrepancies in the name of the applicant are not a reason to find the application or appeal cannot be validly made.

[3] Ibid schedule 13 para 9

e) The Green Area was not included on the First List

31. In support of its position on this matter the Parish Council drew upon emails and letters (the correspondence) from the MPA. These were from 2001 onwards and responded to queries about the status of land. They generally advised that '*the area edged blue', 'the site edged blue'* or the area with permission in principle for quarrying, were included on the First List itself, or had been treated as a dormant site.

32. These though were not contemporaneous with the compiling of the First List but were written some years after. Furthermore, to my mind some expressly referred only to the status of the land subject of Condition 2 on permission CA.49. In other pieces of the correspondence there is a certain ambiguity as to the area to which it referred. As already stated, in discussions about the site over time the Blue Area generally seems to have been taken to be a reference to the extent of permission CA.49 minus the Green Area. However, on the plan attached to the permission that area is not fully edged in blue, as there is no blue line separating it from the Green Area. Rather, the only area on that plan completely edged in blue is the entirety of the application site, including both the Green Area and the Blue Area. This is reflected on the plan found in the First List, which just identifies the application site as a whole, but no area or areas within that site boundary.

33. Consequently, the reference in the correspondence to '*the site edged blue'* could be referring to the application site as a whole rather than just the site area minus the Green Area.

34. Moreover, much of this correspondence tends to be silent on the Green Area and so, in its submissions, the Parish Council contends that this '*infers'* or *'suggests'* that the correspondence is saying the Green Area was not within the First List. An inference of this nature though cannot necessarily be validly drawn from such silence. Indeed it could equally be that establishing the status of the Green Area was deemed (at that time) to be unnecessary, as the permission in that area had been clearly implemented.

35. Therefore, in the light of these points, and in the absence of any plans showing the areas to which the correspondence was referring, I cannot be confident that by advising about the blue edged areas it is necessarily stating that the Green Area is not on the First List.

36. In any event, to establish what is on the First List it is necessary to look at the list itself. In its Composite Legal Submissions the Parish Council accepted this was the only document that conceivably lent any support to the argument that the Green Area was listed, but to my mind it is *the* document that best defines what is or is not on the list. In the First List, the Relevant Extant Planning Permission is given as CA.49, with its description of development being the *'Continued Working of Limestone Quarry'*. I am aware that the void of the *'Limestone Quarry'* to which this description refers was only in the Green Area. Moreover, as stated above, the associated plan shows a line around the entire site subject of that permission, and the extent of the Relevant Extant Planning Permission is not qualified in any other way. Neither in the text nor on the plan is any differentiation highlighted between the Green Area and Blue Area, and there is also no allowance for the Red Area either.

37. I accept that in the First List the description of development subject to permission CA.49 differs from that given on the actual decision notice for that application, but to my mind this has no bearing on this matter. I am clear it is unambiguous that the First List includes all of the site subject of permission CA.49, and so includes the Green Area, Blue Area and Red Area.

38. At the Inquiry the Parish Council contended that numerous other sites on the First List were shown as being subdivided to demonstrate the effects of their respective planning histories on their status in this regard. Mindful of this, it went on to say that as the plan on the First List illustrated no division between the Blue Area and the Green Area it showed that the latter was not included. However, given the importance of being on the First List to the ROMP procedure, if the MPA considered part of permission CA.49 should not be included I would expect it to be actively and clearly omitted in the list itself, whether in a notation on the plan or by accompanying text.

39. Finally, as the MPA is responsible for the First List, it is significant that in both its submissions and at the Inquiry, it confirmed the Green Area was on the list as a matter of fact (albeit, it accepted, in error), and I was informed of no efforts to amend or modify the list.

40. I therefore conclude that the entire application site subject of permission CA.49 was and is on the First List, and so the contention that the Green Area is absent from this list is not a reason to find the application cannot be validly made.

Whether permission CA.49 should be a relevant planning permission insofar as it concerns the Green Area

41. Under Condition 1 permission CA.49 allowed excavations within the Green Area, and it was accepted that work in connection with this element of the permission was undertaken immediately the permission was granted. Moreover, it would appear that the on-going development then contemplated involved a quarry void continuing to be present. This was because Condition 4 prohibited tipping outside of the excavated area, while Condition 6 said that any further fixed plant that may be required in connection with the undertaking had to be sited on the floor of the quarry.

42. I see no reason why permission CA.49 would have prevented a second quarry void being opened in the Green Area, provided that there was continued compliance with the conditions imposed. This would have meant that tipping and further fixed plant associated with the second quarry would have had to be in the original void initially, until such times as the second quarry void became large enough for them to be accommodated there.

43. However, by infilling the original quarry void with landfill and then restoring the land, nearly all visual evidence of that previous permission in the landscape was swept away and no quarry presently remains. As a result, it would not now be possible to resume permission CA.49 by excavating elsewhere, as, at the outset at least, there could be no compliance with Conditions 4 and 6. This is because tipping would have to take place outside the excavated area and further fixed plant could not be confined to the quarry floor, as no such floor would exist.

44. Therefore, noting the Pilkington judgment[4], whilst I accept that it is possible to excavate mineral from elsewhere in the Green Area, for the reasons given above I nonetheless consider that the total infilling of the quarry under the landfill permission has made it physically impossible to carry out that which was authorised, as the works cannot be in accordance with the associated conditions. Consequently, in connection with the Green Area, I consider that permission CA.49 cannot be considered as a relevant planning permission capable of being reviewed under the ROMP procedure.

45. I have also had regard to the judgment known as Hillside[5] but I see nothing in that to lead me to different conclusions on the status of the Green Area.

46. Accordingly, I conclude that permission CA.49 can no longer be treated as a relevant planning permission insofar as it concerns the Green Area.

f) Whether permission CA.49 should be a relevant planning permission insofar as it concerns the Blue Area

47. It seems to be common ground that the Blue Area was part of a site that received the valid grant of planning permission under permission CA.49 for the working of minerals, and that permission was duly implemented in 1954, albeit by works in the Green Area only. The parties also agreed that Condition 2 had not been discharged and the *'full details'* it required had never been submitted. The issue is therefore whether its grant alone is sufficient to render permission CA.49 as a relevant planning permission for the Blue Area, or whether it can only be so once Condition 2 has been discharged.

48. In this regard I have been particularly mindful of the LaFarge judgment[6]. Although this is a Scottish judgment, made by the Inner House of the Court of Session, given the close parallels with English legislation I consider it to be strongly persuasive. It concerned a minerals development where permission had been granted in principle with conditions to require full details of the operations before works began – conditions that seemed to be similar in effect to Condition 2 on permission CA.49. The judgment went on to address the status of land akin to the Blue Area at High Close Quarry, where details in connection with the condition had been neither submitted nor approved. It differed though to the situation before me as the challenge against the Scottish Ministers was, among other things, on the omission of this land from the First List. However, this difference, to my mind, has no particular bearing on the application of the judgment insofar as it concerns this case.

49. That judgment found that the land to which the relevant permission relates means land in respect of which specific minerals development has been authorised[7]. Lord Marnoch also expressed the opinion that, in order to meet the definition of a relevant planning permission, the full and final permission for the carrying out of operations relating to minerals development is required[8]. However, by approving only the principle of the winning and working of minerals, the permission subject of that judgment merely prevented subsequent opposition to the principle of such development. It did not authorise the activity of winning and working of minerals

[4] Pilkington v Secretary of State for the Environment [1973] 1 WLR 1527
[5] Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30
[6] Lafarge Aggregates Ltd v Scottish Ministers [2004] SC 524
[7] Ibid para 51
[8] Ibid para 56

throughout the site[9], as that would only occur once the details were discharged and approval given in accordance with the conditions. Accordingly, the judgment found the parts of the site that enjoyed the benefit of a relevant planning permission were only those where specific minerals development had been subsequently authorised through the discharge of the relevant condition. It did not include the other areas, which were akin to the Blue Area at High Close Quarry, where the permission in principle had been granted but the outstanding details had never been submitted, and so the winning and working of minerals had never been authorised.

50. In my opinion, although the Blue Area has undoubtedly been subject of a valid planning permission for what I have found to be the winning and working of minerals, such development cannot now take place there as it has not been authorised by the approval of full details by the MPA, under the discharge of Condition 2. As such, I find there is not a relevant planning permission for the Blue Area.

51. Responding to this, the appellant drew my attention to the Hamilton judgment[10] of the Supreme Court. While I accept this is a higher court than the court that determined the LaFarge case and is also more recent, to my reading it does not challenge or conflict with that earlier judgment. In particular, the Hamilton judgment seems to focus on the status of a site that was on the First List. It considers as correct the assertions that listing is about preserving an extant planning permission; that, in deciding to place a site on the List, the planning authority is bound to satisfy itself that a relevant planning permission exists; and that once listed, the extant planning permission will remain alive in its entirety[11].

52. However, I do not draw from that judgment the conclusion that being on the list establishes a relevant planning permission or means a relevant planning permission must exist. As the Hamilton judgment and others make clear, the inclusion or otherwise of a minerals site on the list determines whether it can or cannot be developed in the future. It is therefore a responsibility of the MPA to ensure that the list includes all the sites subject of a relevant planning permission and none that are not, and the Hamilton judgment seems to be working on the basis that that exercise would have been undertaken accurately. It is therefore an administrative process. However, if an error occurs, as the MPA acknowledges has happened in this instance, and a site is erroneously placed on the list, I see nothing in the Hamilton judgment that means this would result in a relevant planning permission coming into existence where there is not in fact one otherwise.

53. I have noted the findings of the Stevens Report as well. However, while that might have been the genesis of the ROMP procedure, it pre-dates both the 95 Act and the LaFarge judgment by many years, and, as far as I am aware, has not been formal Government policy over that time. As such, it does not lead me to different findings.

54. Accordingly, I conclude that permission CA.49 should not be treated as a relevant planning permission insofar as it concerns the Blue Area.

[9] Ibid para 44
[10] G Hamilton (Tullochgribban Mains) Ltd v Highland Council [2012] UKSC 31
[11] Ibid paras 23 & 26

Conclusions on this issue

55. As stated above, in order for a ROMP application to proceed it is, among other things, necessary for there to be a relevant planning permission capable of being reviewed. In this instance, I have found that neither the Green Area nor the Blue Area can be deemed to be part of a relevant planning permission. No relevant planning permission therefore exists, and so I conclude the site does not meet the criteria in the 95 Act for a ROMP application. Indeed, as the appellant's proposals straddle the Green Area and the Blue Area and there is nothing before me to show either can be worked in isolation, had I found that only one or other of the Green and Blue Areas did not have the status of a relevant planning permission that would have been sufficient to reach the same conclusion.

Issue 2: What conditions should be imposed

56. Given my findings in relation to the first main issue, it is not necessary for me to consider this second issue.

Conclusion

57. Accordingly, as I have found there is an absence of a relevant planning permission then having regard to paragraph 6(3) of schedule 13 to the 95 Act I conclude the appeal should be refused.

JP Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

R Kimblin KC	Counsel instructed by A Perry
D Brown*	Planning Consultant
A Denham*	Appellant
A Perry*	Planning Consultant
A Pickford*	Noise Consultant
J Tibbitts*	Appellant
P Wormald*	Planning Consultant

FOR THE MINERALS PLANNING AUTHORITY:

A Evans	Barrister instructed by E Priest
R Cryer*	Lead Officer with the Council

FOR PLUMBLAND PARISH COUNCIL

B Stephenson	Plumbland Parish Council Working Group
T Rutherford	Chair, Plumbland Parish Council

INTERESTED PARTIES:

[redacted]	Local resident
[redacted]	Local resident
[redacted]	Local resident
Cllr J Perry	Councillor for Bothel & Wharrels Ward
[redacted]	Local resident
[redacted]	Local resident

*contributed to the round-table session only

DOCUMENTS SUBMITTED AT OR AFTER THE INQUIRY

FROM THE APPELLANT:

APP1: Indicative Quarry Development Plan Figures 8, 9,10, 11A, 11B, 12, 13 & 14

APP2: *Lambeth London Borough Council v Secretary of State for Housing, Communities and Local Government and others* [2019] UKSC 33

APP3: Updated conditions & comments on Inspector's suggested conditions (dated 11 April 2025)

APP4: Comments on conditions (dated 28 April 2025)

FROM CUMBERLAND COUNCIL

MPA1: Comments on conditions (dated 23 April 2025)

FROM PLUMBLAND PARISH COUNCIL

PPC1: Plans showing a distance between the site and the village school.

PPC2: Comments on conditions (dated 10 April 2025)

PPC3: Comments on conditions (dated 17 April 2025)