Planning Inspectorate

Appeal Decisions

Hearing Held on 8, 9, 10, 15 & 16 July 2025

Site visit made on 8 July 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2025

Appeal A Ref: APP/Q9495/X/24/3349473
Clints Quarry, A595 Bothel to Redmain, Moota CA13 0QE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr N Harrison of DA Harrison against the decision of Lake District National Park Authority.
- The application ref 7/2021/2038, dated 9 February 2021, was refused by notice dated 14 March 2022.
- The application was made under section 191(1) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is the winning and working of limestone.

Appeal B Ref: APP/Q9495/W/24/3350065
Clints Quarry, Moota CA13 0QE

- The appeal is made under paragraph 11(1) of Schedule 13 of 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.
- The appeal is made by DA Harrison Limited against the decision of Lake District National Park Authority.
- The application ref is 7/2023/2277.
- The application was for the determination of modern planning conditions on planning permission references CA/NC/1029 and 7/74/2081.

Decision: Appeal A

1. The appeal is dismissed.

Decision: Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. Although the event proceeded by way of a hearing, I held a Case Management Conference (CMC) on 28 April 2025. The purpose of the CMC was to discuss procedural matters relating to the hearing.

4. The appellant has submitted two appeals: Appeal A, a Lawful Development Certificate (LDC) appeal, against the National Park Authority's refusal to grant a LDC; and Appeal B, an appeal against the Authority's failure to give notice within the prescribed period of a decision on an application for the determination of new conditions.

5. Planning permission was granted in 1966, reference CA/NC/1029 for the quarrying of limestone at Land at Clints Park, Moota, Cockermouth, subject to conditions.

Planning permission was granted in 1974 for the extension of quarrying operations at Clints, Quarry, Moota, subject to conditions. Appeal A relates to the land covered by the 1974 permission[1], whereas Appeal B relates to the land covered by both the 1966 and the 1974 permissions.

6. The Environment Act 1995 introduced the requirement to review old mineral planning permissions, which I shall refer to as 'ROMP'. Minerals development cannot lawfully commence at dormant sites until the applicant has submitted an application for appropriate minerals conditions and conditions have been agreed by the mineral planning authority.

7. With respect to Appeal A, the appellant describes the existing use as 'operations consisting of excavations and the use of land for the winning and working of limestone in accordance with the planning permission reference 7/74/2081 at Clints Quarry, Moota, Cumbria'. The Authority refused the application on the basis that it had not been demonstrated on the balance of probabilities that development by the carrying out of operations consisting of excavations for the winning and working of limestone in accordance with planning permission reference 7/74/2081 took place between 20 November 1974 and 19 November 1979.

8. Section 55 of the Town and Country Planning Act 1990 (as amended)(the Act), sets out that except where the context otherwise requires, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Although mining is a continuing operation, each shovelful extracted from an area is itself a mining operation constituting a separate act of development, as held in *David (Thomas)(Porthcawl) Ltd v Penybont Rural District Council* [1972] 3 All E.R. 1092, CA. The appellant has confirmed that they are seeking a lawful development certificate that excavations in accordance with the 1974 planning permission were lawfully commenced, and the permission is therefore extant. I shall therefore deal with Appeal A on this basis.

9. Concern regarding the validity of the appeals was raised prior to and during the course of the hearing, in particular, whether the correct notifications had been carried out and whether, the appellant owns the mineral rights or not and therefore has a right of appeal. To address concerns regarding notification, additional notifications were issued prior to the hearing. The Authority served notices on the individuals identified by the Parish Council and the appellant has, independently, placed a notice in the newspaper circulating in the area.

10. With respect to the LDC, the Act provides that any person may make an application, there is no requirement for that person to have an interest in the land. The appellant was the applicant for the LDC and therefore has a right of appeal.

11. With respect to the ROMP, Schedule 13, paragraph 9(1) provides that any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site or an active Phase I or II site, apply to the mineral planning authority to determine the conditions to which the relevant planning permissions relating to that site are to be subject.

12. The ROMP application was submitted by DA Harrison Ltd, who would be the day-to-day operator of the Quarry. The appellant confirmed that it does not in its own

[1] Notwithstanding any argument as to whether the 1974 planning permission was a consolidating permission.

right own the land which is the subject of either of the two permissions relevant to this appeal, nor does it in its own right have any proprietary interest in the minerals thereunder. However, the land is owned by members of the Harrison family and the surviving members of the family to whom the land was transferred include directors of DA Harrison Ltd.

13. The appellant points out that 'entitled to an interest in mineral' is not a defined term within the legislation and suggests it should be contrasted with paragraph 7 of Schedule 13, which requires a non-owner to be 'the owner…of any interest in any mineral'. The appellant suggests there is an implied license coupled with an interest, or that the arrangement is a contractual licence pursuant to an implied contract between the Harrisons and DA Harrison Ltd authorising the latter to win and work the minerals within the quarry.

14. As an alternative, the appellant suggests that if I consider that approach is incorrect, it would be wrong in principle and practice to conclude that the application was invalid or a nullity such that the ROMP appeal ought to fail. It is suggested that the position is analogous to that considered in *R (Park Pharmacy Trust) v Plymouth City Council* [2008] EWHC 445 (Admin). In that case the court found that it would not be appropriate to quash a planning permission simply because of a mistake in identifying the correct owner on the application form.

15. My attention has been drawn to *Maximums Networks Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1933 (Admin) where it was held that it is open to the Secretary of State to conclude that it is appropriate to continue to process an appeal and accept it as valid notwithstanding breaches of any requirement if that course of action was appropriate in all the circumstances; that when exercising discretion under section 79 the question whether prejudice might arise from the failure to comply with the statutory requirements.

16. In this case, it is suggested that no prejudice would be caused to either side were the Harrisons to be effectively treated as the appellants in place of DA Harrison Ltd for the remainder of the appeal. The individuals giving instructions and attending the hearing would be the same. Richard Harrison has attended the hearing throughout and is the managing director of the company.

17. Both arguments, in my view, are valid. Since the appeal was made in the name of DA Harrison Ltd, I have used this in the banner heading above.

Appeal A: LDC

Main Issue

18. The main issue of Appeal A is whether the Authority's decision to refuse the application was well founded. This will turn on whether the 1974 planning permission was begun prior to 20 November 1979.

Reasons

19. An application under section 191(1) of the Act[2] seeks to establish whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then

[2] Town and Country Planning Act 1990 (as amended)

be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

20. As set out above, the appellant is seeking a certificate that excavations in accordance with the 1974 planning permission were lawfully commenced, and the permission is therefore extant. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the ‘balance of probabilities’. An appellant’s evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

21. Planning permission was granted in 1966 for the quarrying of limestone on land at Clints Park, Moota. It is undisputed that the 1966 planning permission was begun and limestone worked. The permission included a number of conditions, which included limitations on the horizontal and vertical extent of the working. In particular, Condition 1 limited the area to be worked vertically, to a maximum depth of 50 feet at the north-eastern boundary of the site with the worked floor of the quarry grading to the existing ground level at the south-western boundary of the site.

22. The quarry was not worked in full accordance with the conditions attached to the 1966 permission and was worked at a greater depth in parts of the site. Planning permission was granted on 20 November 1974 for ‘Extension of quarrying operations’ at Clints Quarry, subject to condition 1, which required the development to be commenced within five years. I have been provided with a plan, which shows a red line drawn around land to the south west of the 1966 permission.

23. The Authority confirms that its own records are on microfiche and includes a plan which is not specifically referenced in the decision notice but shows an amendment to the application site boundary made during the determination of the application. The plan is in black and white and shows the line of the 1966 permission and the 1974 permission abutting one another.

24. The plan I have been provided with shows a hand drawn red line and blue line. I have also been provided with a copy of a microfiche, which shows how the site would be worked. To quarry to the existing planning permission boundary as envisaged, it would have been necessary to continue to quarry below the depths permitted by the 1966 permission.

25. The Town and Country Planning Act 1971 (TCPA 1971), section 43, provides that development shall be taken to be begun on the earliest date on which any specified operation comprised in the development begins to be carried out. The Town and Country Planning (Minerals) Regulations 1971 (S.I. 1971 No. 750), Regulation 7 provides that “Development consisting of mining operations shall be taken to be begun on the earliest date on which any of the mining operations to which the relevant grant of planning permission relates begin to be carried out.”

26. Mining operations means the winning and working of minerals other than excepted minerals in, on, or under land, whether by surface or underground working. Winning means making mineral accessible and working means removal from land.

In order to begin the development, it is necessary for the works carried out to be comprised in the development for which planning permission was granted and to be more than *de minimis*.

Whether the 1974 permission was a consolidating permission

27. The appellant suggests that the 1974 permission was a consolidating permission, regularising the 1966 permission and permitting the extension of the existing quarry to the south west. Although the red line plan is drawn around a parcel of land which excludes the land covered by the 1966 permission, it is suggested that, given the conditions attached to the permission and, significantly, because it would not have been possible to work the area proposed without amending the 1966 permission, it must have granted permission for the 1966 area as well.

28. Were I to find that the 1974 permission was a consolidating permission, because the extraction of mineral occurred within the area covered by the 1966 permission area, the permission would have begun for the purposes of the TCPA 1971 (as amended) and the appeal would succeed.

29. A planning permission is a public document which may be relied upon by parties unrelated to those originally involved. The approach is to consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the planning permission and with common sense. A planning permission should stand by itself, and the meaning should be clear within the four corners of the document. If something is not clear by the planning permission clearly incorporates the application and plans, they may be used as aids to interpretation or to understanding the scope of what is permitted. It is also permissible to look at extrinsic evidence, depending on the circumstances of the case.

30. The description of the development on the 1974 permission is ‘Extension of quarrying operations’. Condition 2 states that (a) The working face of the limestone shall not extend in a westerly direction beyond the line shown in blue on the approved plan. (b) The area shown hatched red on the approved plan shall be used for access purposes only and shall not be used for the working of limestone or storage of waste materials. (c) The area cross-hatched in red on the approved plan shall be excluded from the permission hereby granted.

31. Condition 3 relates to top soil and overburden and states ‘top soil shall be stored temporarily in an area to be agreed with the Local Planning Authority and thereafter the top soil and overburden shall be back filled in the correct order, i.e. top soil on top of overburden, either on the worked floor behind the face of the quarry or on the floor of one of the worked out quarries at Moota. Condition 4 similarly requires waste material to be disposed of on the floor of the proposed, existing or disused quarries.

32. Within ‘Explanatory Notes to Accompany Planning Application’ the applicant describes the application as relating to ‘a westerly extension of the existing quarry No.3…’. The proposal is described as being ‘to extend the present advancing 50’ face some 200 to 280 yards westwards to the end of the present leasehold.’ The rocks to be quarried are identified as ‘the “Fifth Limestone” of the Lower Dibunophyllum Zone’.

33. From the four corners of the planning permission, I consider a reasonable reader would interpret the permission to grant planning permission for quarrying within the red line boundary. Although the conditions refer to land outside the red line boundary, even if the appellant's intention (and the Authority's interpretation) was to regularise the 1966 permission, my interpretation of the planning permission is that it does not do so.

34. The appellant suggests that overburden placement and re-instatement is dealt with by reference to the whole site (condition 3). While the condition does refer to top soil and overburden being backfilled, either on the worked floor behind the face of the quarry or on the floor of on of the worked out quarries at Moota, there is no suggestion that this means the permission applies to the other quarries, nor do I take this to mean that the 1974 permission must incorporate the 1966 permission. This applies to conditions 4 and 6 of the 1974 permission, which refer to waste material and leaving the site in a tidy condition respectively.

35. The horizontal extent of the permission is defined by the red line boundary and the extent of working within that red line limited by condition. Although application plans show the advancing face in the 1966 area (in addition to the 1974 area), this is not, in my view, sufficient to bring it within the scope of the permission, or render it a consolidating permission. To do that, it would have been necessary for the red line boundary to have covered the whole site.

36. The appellant makes the point that if the 1974 permission did not allow working within the area of the 1966, then what did allow that mineral working to occur? It seems, from the evidence, that any such working would have been a breach of planning control. However, given the passage of time, any such works would most likely long be immune from enforcement action.

37. For the reasons given above, in my judgement, the 1974 permission was not a consolidating permission.

Whether the development was begun within the statutory period

38. The 1974 planning application was made for the extension of quarrying operations. The approved plan shows the 'existing planning consent line' and it seems logical that the 1974 application boundary would have been drawn next to the 1966 boundary. At the time the 1974 application was made, the quarry face is stated to have been a substantial distance from the interface of the two permissions.

39. The appellant states that a substantial amount of additional mining occurred to reach the application boundary subject to permission ref. 7/74/2081 and that working then took place within the planning permission boundary area, amounting to the removal of approximately 1,615m2 of mineral and overburden. This figure has subsequently been revised by the appellant in response to concerns raised by the Parish Council to 1,082m3, comprising 860m2 extracted and 412m2[3] tipped within the 1974 permission area. This comprises a slither of land, which varies in width, along the edge of the purported 1974 permission boundary.

40. In support of their case, the appellant has provided me with an aerial photograph, dated 1976 from Historic England. The image is stated to have been obtained on a recorded sortie by the Royal Air force and has a scale of 1: 7,500. The appellant

[3] 522m3 volume or 1,011 tonnes

has overlain what they suggest is the 1966 permission and the 1974 permission on the photograph. It appears, from the photograph, that there has been some disturbance within the 1974 permission boundary, though its extent appears far more limited than the slither of land referred to above. It is suggested by the appellant that this comprises overburden and some mineral extraction, although it is not clear from the photograph what has been removed or deposited, or its extent.

41. While this would seem to accord with the appellant's argument that some sort of working has commenced within the 1974 permission area, I have several concerns about interpreting it in this way. Firstly, the appellant relies on an old plan setting out the extent of the 1966 permission boundary which appears distorted, most likely because it is an old paper plan which has been folded. This matters, because a slight change in the angle of the red line boundary could result in the areas of disturbance being totally excluded from the 1974 permission boundary. The appellant confirmed during the hearing that the plan was a plan that Stephenson Halliday had in its archives.

42. Secondly, the aerial photograph was taken at height, with a negative size of 9” x 9”. The Action Group/Parish Council raise concern regarding perspective effect, differing ground levels and atmospheric haze distortions, which are suggested to distort the positions of elements relative to a true map. The appellant suggested this was overcome by using known points, such as the kink in the wall, however, when plotting the wall on the different plans, there are differences in its alignments, as well as other known features (the fencing).

43. A topographical survey carried out in 2018, with the 1974 and 1966 permissions plotted, show there is a height difference of up to around 2m between ground level where the current fence is located and the 1974 permission boundary in part of the site. On the eastern side of the fencing, the land slopes downwards towards a plateau, beyond which the land slopes at a steeper gradient, towards the quarry floor.

44. The appellant pegged out what they suggest is the 1974 consent boundary on the ground and has plotted this on a plan with site levels marked. The plan shows some of the pegs to be located around 2m lower than adjacent fence posts. The inference being, that this indicates material has been excavated or removed and since this is within the 1974 permission boundary, it is sufficient to have begun the permission. However, the fence as plotted does not appear to align with the fence line on the opposite side of the dry stone wall.

45. While fence lines can change, there is no evidence to show that the alignment of the fencing on the opposite side of the dry stone wall has changed. Given there is no quarrying on that side of the dry stone wall, it seems unlikely that there would be any pressure or need to realign that fencing. During my visit, I saw that the fencing (which was present during the survey) on the quarry side of the dry stone wall is broadly in line with the fencing on the other side of the dry stone wall, suggesting that it is (at least at that point) on its original alignment.

46. Furthermore, when comparing the plotting of points along the dry stone wall, the alignment does not match precisely. Given the very limited extent of land which is suggested to fall outside of the 1966 permission area and within the 1974 permission area, such apparent anomalies undermine the accuracy of the overlays

produced. While the appellant suggests the plotting can be done with a high degree of precision, this is limited by the accuracy of the underlying historic plans and aerial photography used. This matters because the land which falls within the 1974 boundary which is asserted to have been worked is limited in extent.

47. It was suggested during the hearing that the removal of material would have been the result of a contractor going in to the site with a dozer and scraper and removing the material. It was asserted that there would likely have been some mineral within the material removed, whether that was limestone or clay, and that this was sufficient to begin the permission. However, I have some concerns about drawing such a conclusion. Given the likely costs associated with hiring in a contractor, the operator is likely to have employed someone to remove topsoil and overburden from a substantial area. Given the coincidence between the permission boundaries and the working extent, it seems likely that the contractor was required to work to the 1966 permission boundary.

48. Boreholes taken in the area show boulder clay/overburden varies in depth. A borehole taken within the 1974 permission area, Borehole 9[4], shows a depth of 6.1m. While the borehole information was not submitted in support of the LDC application, in my experience it is frequently necessary to remove overburden of some sort when carrying out mineral working. Even if I were to conclude that some material was removed from within the 1974 permission boundary, I have no idea what that material comprised.

49. The topographical survey shows me how topography varies within the site at the date of the survey, decades after the land is suggested to have been worked, nothing more. Furthermore, there is clear evidence of land slippage and fencing being realigned to accommodate landslips, with straining posts[5] and remains of old fencing evident along part of the slope, suggesting that differences in topography within the area are not all the direct result of mining operations. Local residents support this conclusion, stating that they observed a gradual collapse of the top of the bank on the quarry side of the fence.

50. The appellant suggests that material was tipped within the 1974 application boundary and that this was also sufficient to begin the development. However, it is not clear from the evidence where this material was derived from (the area covered by the1966 or the area covered by the 1974 permission), what it comprises or what its extent was in 1976. Even if I were to agree that the evidence shows material was placed within the 1974 permission area, it is not clear from the evidence whether the tipping of material was comprised in the development for which planning permission was granted. I do not agree with the appellant's suggestion[6] that material tipped from the 1966 permission area would have begun the 1974 permission, as it would not have been comprised in the development for which planning permission was granted.

51. Significantly, there is no first hand account of working at the quarry available. On 30 September 1977 the Chief Planning Officer wrote to the then operator of the site, regarding the permissions for working at Clints Quarry and enforcement action, which the Planning Board had authorised. Within the letter, it is noted that 'as far as I am aware, no work has taken place in the extended area approved in

[4] British Geological Survey (BGS) Historical Logs
[5] Seen during my site visit.
[6] Suggested by Mr Hunt during the hearing.

1974. If no work does take place then the permission will lapse in November 1979.'

52. A letter, dated 12 October 1977 was then sent to the Chief Planning Officer, by the Production Director of Eskett Quarries Ltd, which confirmed that the 1974 area has not, as yet, been worked due to severe faulting whilst working the 1966 area. I accept that they may have been mistaken, and that the author of the letter was clearly not a planner, however, given their role in respect of the company, this is likely to reflect the position of the time.

53. A further letter was sent on 9 July 1981 by the then Chief Planning Officer, regarding proposed coal stocking. The letter refers to an application to stock coal at the disused quarry site No.3, and states that permission to work the quarry was granted on 20 November 1974. However, it seems likely the author of the letter actually meant the area covered by the 1966 permission, rather than the 1974 permission, given the references to a conical tip of waste material and previous consideration by the Board to defer taking any action. Furthermore, a plan submitted in support of the application in 1981, reference 7/81/2157 shows Quarry No.3. No working is shown in the 1974 permission area.

54. The Environment Act 1995 (the EA) introduced provision for mineral planning authorities to prepare a list of mineral sites in their area. The Mineral Planning Authority (MPA) gave notice under paragraphs 3 and 8 of schedule 13 of the EA, identifying the Land at Clints, Bothel as a dormant site. The plan accompanying the notice identified a number of permissions, including the 1974 permission area. The Authority has not retained the correspondence related to the review carried out under the provisions of the EA nor any assessment of the status of the various permissions.

55. The Authority has drawn my attention to *Foster, R (on the application of) v Oldham MBC & Pugmanor Properties Ltd* [1999] EWHC Admin 774 which concludes "It would be absurd to require the MPA to determine conditions for a lapsed permission. The MPA is entitled to consider the validity of any permission alleged in a para 9 application to be a "relevant planning permission" and to do so at that stage when it is dealing with that application" (para 18 of the judgement).

56. The Authority went through a statutory process to identify planning permissions on the 'First List', which, at the time, does not appear to have been challenged. However, the inclusion of a site on the First List is not, in my view, itself an indication that a planning permission has been lawfully begun and the appellant did not pursue a contrary argument during the hearing.

57. Other evidence provided, including a letter from the Mineral Valuer and a plan produced on behalf of the appellant in 1992 as part of their own review of the permissions at the site, and a memo dated 1997 do little to assist since they were produced so long after works at the site ceased.

58. There was clearly significant quarrying carried out within the 1966 permission area between 1972[7] and 1976[8]. However, the extent of working broadly aligns with the extent of the 1966 permission. It seems likely, in my view, that the operator at the time worked within the 1966 permission boundary and that topographical changes

[7] Based on the1972 Historic England Image
[8] Based on the 1976 Historic England Image

since are a result of erosion and land slip. In my judgement, the appellant has not shown, on the balance of probabilities, that the 1974 planning permission was begun prior to 20 November 1979 and so the appeal must fail.

Conclusion

59. For the reasons given above, I conclude that the Authority's refusal to grant a certificate of lawful use or development in respect of 'excavations in accordance with the 1974 planning permission were lawfully commenced, and the permission is therefore extant' is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B: ROMP

Reasons

60. Whether, if I find the 1974 permission was not implemented, it is possible to determine the conditions for the 1966 permission alone.

Whether the proposed conditions would extend the scope of the 1966 permission

61. The 1966 permission granted the quarrying of limestone. Condition 1 attached to the permission imposed limitations on the area to be worked (a) horizontally and (b) vertically. The reasons given for imposing the conditions are to minimise injury to the visual amenities of the locality, in the interests of road safety and to maintain control over the use of the site. This is a fundamental condition which determined the scope of the development. A reasonable reader would understand that the permission allows the quarrying of limestone and that the extent of working was limited horizontally and vertically by condition 1. An express permission granted subject to a limitation has effect to authorise only the development defined therein.

62. The appellant suggests that I have a free hand in respect of the planning conditions to be imposed because there is both power to include any condition which might have been included on the grant of the consent and also to add conditions and to substitute conditions. The appellant suggests that the only power which is not available is to change the description of development, for reasons as explained in *Test Valley Borough Council v Fiske* [2024] EWCA Civ 1541. I was referred to paragraph 120 of the judgement. However, the point being made concerned section 73 of the Act, not ROMPs.

63. The legislation guards against further restriction on working rights and makes provision for compensation where this would occur. It does not, however, in my view, empower a local planning authority to substitute a condition so that significant working which would not have been authorised by the original permission can take place. Should the operator wish to work at a greater depth, it would be open to them to submit an application for planning permission.

64. The 1966 permission granted planning permission for the quarrying of limestone, with working limited both horizontally and vertically by condition. When read as a whole, my interpretation of this is that planning permission was granted for the quarrying of limestone within the limits set out in condition 1 and no more. The natural and ordinary meaning of the words used, viewed in their particular context and in light of common sense are that planning permission is granted for the quarrying of limestone within the limits specified in the condition.

65. Although the Environment Act enables the MPA to add to or substitute any existing conditions to which the permission in question is subject, the conditions which the MPA has to determine are the conditions to which each **relevant planning permission** relating to the site is to be subject. It cannot, of itself, permit development which is not authorised by the relevant planning permission.

66. Relevant planning permission means any planning permission, other than an old mining permission or a planning permission granted by a development order, granted after 30th June 1948 for minerals development. The scope of a permission may be restricted by express conditions. The grant identifies what can be done – what is permitted, whereas conditions identify what cannot be done – what is forbidden. In this case, there is no relevant planning permission to work the site at a greater depth, condition 1 forbids it.

67. Even if I were to accept the appellant's proposition, that the ROMP process can be used to allow significant further mineral working, the conditions proposed would still need to meet the policy tests, be necessary and should not affect the economic viability of the operation. The permission already limits the extent of mineral extraction that can take place. The site has already been worked in breach of that condition, and the appellant proposes working at a much greater depth than that which is permitted by condition. Reimposing the original condition would not be reasonable because the appellant cannot comply with it, given the extraction which has already taken place.

68. The conditions suggested by the appellant and the working scheme proposed includes the extraction of mineral well below the depth authorised by the 1966 permission. The appeal site is located within the National Park. The National Planning Policy Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks and that the conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight. Paragraph 190 states that permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

69. During the hearing, the appellant proposed a suite of conditions which could be imposed which relate to the 1966 permission area only. It was suggested that a working scheme could be secured by condition, as well as a restoration scheme and a soil and waste management scheme, however, it is far from clear what such working would comprise. Even if I were to retain the original depth condition, there are implications for the other conditions.

70. Significantly, I do not know what it would mean in terms of the Special Area of Conservation (SAC). While it is still possible for modern planning conditions to be imposed on the 1966 permission, it is not possible for me to suggest modified conditions, since I do not know how they should be modified. Furthermore, there are implications in terms of Environmental Impact Assessment (EIA) and consultation, as well as Habitats Regulations, which I shall come on to.

The Habitats Regulations

71. Notwithstanding the above, the Authority has also set out its position that the Habitats Regulations presents a fundamental barrier to me approving the conditions. Regulation 9(3) of the Conservation of Habitats and Species

Regulations 2017 (as amended) (the Regulations) requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions.

72. Clints Quarry was designated as a Special Area of Conservation (SAC) in 2005[9]. The qualifying features of the SAC are Great Crested Newt *Triturus cristatus* (GCN) and so I must consider European sites and protected species. The conservation objectives for the site are 'Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of the habitats of qualifying species
- The structure and function of the habitats of qualifying species
- The supporting processes on which the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

73. Notwithstanding any arguments made by the appellant regarding the potential benefits of proposed mitigation/compensation, the project, which is the quarrying of limestone, is not connected with or necessary to the conservation management of the SAC.

74. The Authority has drawn my attention to the case of *CG Fry & Son Limited v (1) Secretary of State for Levelling Up, Housing and Communities (2) Somerset Council* [2024] EWCA Civ 730 where it was held that the requirement for an appropriate assessment will be required when the local planning authority is making the final decision in a sequence authorising the development to proceed. The case has since been considered by the Supreme Court, which has upheld the Court of Appeal's decision insofar as it relates to the requirement for an appropriate assessment in respect of an SAC.

75. The appellant does not dispute that the Habitats Regulations apply, rather the appellant's case is that it does not prevent the appeal from succeeding for reasons I will come on to. In support of the appeal, the appellant has produced a shadow Habitat Regulations Assessment[10]. The appellant proposes to work the mineral within the 1966 permission area, which would result in the loss of great crested newt breeding ponds and around 3.8ha of terrestrial habitat. The appellant proposes to mitigate this through exclusion zones, habitat creation and enhancement and trapping and translocation to newly created habitat.

76. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended)(the Habitat Regs) states that a competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of

[9] The site is also a Site of Special Scientific Interest (SSSI) notified under Section 28 of the Wildlife and Countryside Act, 1981 and notified for the same reasons as the SAC.
[10] It is for the competent authority to make an Appropriate Assessment.

that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

77. Regulation 63(5) states that, in light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be). In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

78. Regulation 64 concerns considerations of overriding public interest and states that (1) if the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which subject to paragraph 2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

79. Regulation 64 states that if the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

80. During the course of the hearing, my attention was drawn to the provisions of regulation 65 of the Habitats Regulations, which concerns the review of existing decisions and consents. Regulation 65(1) states that, where before the date on which a site becomes a European site or a European offshore marine site a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 63(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable (a) review its decision or, as the case may be, the consent, permission or other authorisation; and (b) affirm, modify or revoke it.

81. The Authority has not carried out such a review to date and there was no indication that any such review is imminent. The appellant suggested an alternative to me carrying out an appropriate assessment is to impose a condition stating that no further development or other works shall take place or continue until such time that a review of the permission has been completed by the competent authority pursuant to Regulations 65 and 66 of the Conservation of Habitats and Species Regulations 2017.

82. However, I have real concern with this approach. Regulation 65 is intended to allow a review of a decision taken before the site became a European site. It does not empower an authority to review a decision taken after the site became a European site, nor as an alternative to carrying out an appropriate assessment, as required by regulation 63 where a further decision is to be made. The decision that would be being reviewed would (it seems to me) be the original grant of planning permission in 1966 and not the review of conditions. I do not think such a condition absolves me of my duty to make an appropriate assessment in this case.

83. The Environmental Statement states that the loss of the breeding ponds, together with the loss of almost all the terrestrial habitat within the southern quarry is likely to result in the loss of perhaps two thirds of the GCN population of the SAC, which would be an exceptional adverse impact on the site integrity of the SAC and conservation status of the Clints Quarry GCN population.

84. The appellant's schemes and assessments are made on the basis that the 1974 permission is extant and will be worked and that the 1966 permission can be worked below the limitations set out in condition 1 of the permission. As set out above, I have found that the 1974 permission is not extant and that the conditions can only apply to the relevant planning permission, which is limited in depth.

85. The appellant suggests that it would be possible to secure details of a working programme by condition, as well as the submission of a Landscape and Ecological Management Plan (LEMP) for the provision, improvement, management and maintenance of the Great Created Newt habitat. However, I do not know what such schemes would comprise. I do not know what parts of the quarry would be worked, or what the implications of that working would be in terms of GCNs and their habitat. I do not know whether the mitigation and compensation measures proposed by the appellant would be appropriate, or how they might change in light of my findings above. This is, in my view, wholly unacceptable.

86. Mitigation is proposed, under a European Protected Species Licence:

- The creation of a newt exclusion zone comprising Phases 1 and 2;
- A programme of habitat creation and enhancement works on land in close proximity in the ownership of the applicant;
- A trapping and translocation operation in Phase 3 with exclusion measures to prevent re-entrance to the site.

87. Regulation 63 provides that the competent authority may only agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site. In order to avoid an adverse effect on integrity, the favourable conservation status of a habitat or species, that comprise the qualifying features of a site, must either be maintained or not further degraded or impeded from achieving a favourable conservation status.

88. Natural England has been consulted during the appeal and, while it was unable to attend the hearing, reiterated previous advice that '*The proposal will lead to a total loss of the breeding ponds in the southern quarry and 3.8ha of high-quality terrestrial habitat. This would impact on a significant population of great-crested newts, which are the sole reason for the designation of this site as a SAC, and the associated Clints Quarry Moota Site of Special Scientific Interest (SSSI). Natural England therefore advise that the proposal will have an adverse effect on the integrity of this SAC.*'

89. The appellant confirms that the most recent assessment of the condition of the Clints Quarry SAC by Natural England in 2017 states that it is in unfavourable condition and declining due to the presence of stone loach in Pond 1 (a predator of great crested newts) and a declining population. There was some dispute during the hearing as to whether this is a fair reflection of the condition of the SAC, given

an apparent increase in GCN population suggested by more recent surveys[11]. However, the appellant's ecologist cautioned that the surveys are not scientifically repeatable and pointed out that Natural England's position is that they are still declining.

90. During the hearing my attention was drawn to a district level licensing scheme, which has been introduced to simplify licensing for GCNs. The appellant confirmed that because the appeal site it within a red area, it means district level licensing cannot be used in this case. Nevertheless, the appellant suggested that the principles are being addressed with this proposal, with landscape scale habitat creation for GCNs, which will create ecosystem resilience, through natural recruitment and mitigation. It was suggested by the appellant's ecologist that natural recruitment will result in increased genetic variation of the population which safeguards the population and that if a 'do nothing' approach is adopted, decline will continue.

91. However, the future benefits to be derived from the proposed measures are only potential, as they have not yet been implemented. It is not possible for those benefits to be foreseen with the requisite degree of certainty. Concern has been raised regarding the effectiveness of translocation of newts and the appellant's own habitats regulation assessment states that '*there is still a risk that there could be a significant population decline during Phase 3 due to the removal of three out of four of the current breeding ponds and one third of the terrestrial habitat within the SAC. Studies show that translocation of great crested newts to suitable habitat is often successful in creating new self-sustaining populations. But they also show that this is not always the case: various cases are referenced in relation to this, including Cooke, 2001, Edgar Griffeths and Forster, 2005, Horton and Branscombe, 1994, Lewis, 2012, May 1996, McNeil, 2010 and Oldham and Humphries, 2000).*'

92. The appellant's ecologist acknowledged this during the hearing and suggested that this was due to ponds not always being built of the right size, not being designed correctly and not having the right vegetation. While the condition(s) proposed would ensure that translocation would not take place until such time as the receiving ponds are shown to be self-sustaining, there would still (potentially, because I do not know the area that would be worked) be the loss of the ponds and habitat within the SAC itself.

93. Furthermore, there is uncertainty as to whether any translation of newts, whether from the appeal site, or to it, following completion of mineral extraction, would be successful. I am not satisfied, on the basis of objective and credible evidence, that the adverse effects on the integrity of the site can be ruled out beyond all reasonable scientific doubt.

94. Regulation 64 enables a competent authority to agree to a plan or project where it is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest.

Whether there are alternative solutions

95. The Authority raised concerns during the hearing whether consideration of alternatives has been meaningfully assessed. It was suggested that an alternative

[11] Figure 2: Clints Quarry Great Crested Newt Records: Habitats Regulations Assessment

quarry should have been assessed. Alternative solutions should be technically, legally and financially feasible, achieve the overall objective of the original proposal and have a less damaging effect on the affected site as well as no additional adverse or worse effects on any other European Sites.

96. The appellant is seeking approval of conditions so that it can work limestone. The company makes ready mix concrete products which requires limestone aggregate. It is stated that the company is experiencing increasing difficulty in securing a consistent quality supply of limestone and incurs road mile costs of obtaining aggregates from outside of Cumbria.

97. The appellant identifies the ‘do nothing’ scenario, which means that the site would remain unchanged, the planning permission would lapse in 2042 and the appellant would have to source mineral for their operations from other locations. It is suggested that the permitted reserve would be sterilised and higher transport costs, both financial and environmental, would be incurred. It was suggested that the ’do-nothing’ scenario does not overcome the fact that the permission exists and is not a satisfactory alternative because it would not deliver the limestone and associated benefits.

98. In terms of the EIA, the appellant has suggested that consideration of some alternatives, would be unreasonable, because the planning permission already exists. However, the Habitat Regulations does not make a distinction between projects which already benefit from some sort of consent and so I see no reason why consideration of alternatives should be narrowed in this way when deciding whether a derogation is possible and appropriate.

99. The shadow Habitats Regulation Assessment carried out by the appellant considered an alternative option, which is to move the extraction void out of the SAC and relocate it just to the west of the existing quarry. Although the appeal site is located within the National Park, and so alternatives within the appellant’s ownership may be difficult to secure planning permission for, the appellant has not considered the availability of sites outside the National Park, for example.

100. As pointed out by the Parish Council/Action Group, there is a national system in place for the supply of aggregates and industrial minerals. While the appellant points to a lack of supply, rather than a theoretical landbank, which (it is asserted) is not available to them, there is no substantive evidence to show alternatives are not **available** (my emphasis).

101. The appellant suggested during the hearing that there is no satisfactory alternative to working the 1966 and the 1974 permissions, other than proposed. However, the appellant suggests that, in the event I find the 1974 permission is not extant, it would be possible to work the 1966 permission area alone. It is clear, therefore, there is an alternative in this respect. Furthermore, as set out above, I have found that the quarry cannot be worked beyond the limitations set by the 1966 permission.

102. Given this, it is clear that the site cannot be worked as proposed by the appellant. However, I do not know how the site would be worked or whether there are alternative options to whatever extent of working the appellant may ultimately propose. I am not satisfied, on the evidence before me, that there are no feasible alternative solutions that would be less damaging or avoid damage to the site.

103. Even if I were to conclude that there are alternative solutions, where an adverse effect on the integrity of a site cannot be ruled out and there are no viable alternative solutions to the issue that the plan or project is seeking to address, Regulation 64(1) only allows the Competent Authority to agree to the plan or project where it is satisfied that the plan or project must be carried out for imperative reasons of overriding public interest (IROPI).

104. The decision as to whether there are IROPI involves an exercise balancing the adverse impacts of the proposed development upon the conservation aims of the Habitats Directive[12] and the public interest benefits of the proposal if implemented, to assess whether those benefits justify those adverse impacts. In terms of benefits, the focus is upon those that are in the public interest.

105. The appellant's position is that the impact on GCN is not adverse, but is beneficial and there is therefore nothing to weigh against the scheme. However, this depends upon the effectiveness of mitigation / compensation which is proposed for GCNs, including the creation of ponds outside the SAC, the translocation of GCNs and the creation of ponds inside the SAC following the completion of mineral extraction. As discussed above, the schemes which have been proposed by the appellant have been put forward on the basis that both the 1974 permission area and the 1966 permission area will be worked to a greater depth than is permitted.

106. The appellant suggests securing details by a scheme, however, to show that the impact on GCN would not be adverse, but would be beneficial, there must be certainty in terms of the scheme proposed. Furthermore, it is the compensatory measures which are asserted to weigh in support of the project, rather than the project itself. As discussed above, there is uncertainty regarding the effectiveness of the measures proposed: the translocation of GCNs is not always effective; habitat creation is not always effective.

107. To address this, it was suggested that monitoring over a period of 10 years would be the mechanism to ensure the effectiveness of the mitigation/compensation. However, this would only ensure the success of the habitat created up until the point of translocation from the SAC. At this point, ponds may (or may not) be destroyed. The effectiveness of habitat creation within the SAC itself and any subsequent translocation would be difficult to ensure through the conditions proposed.

108. During the hearing, the appellant referred to the nature and importance of DA Harrison in terms of the manufacture of specialist concrete products, which has a national distribution and includes the strategic road network, hospitals, schools, extra care facilities, agriculture and the modernisation of public buildings. Reference was also made to the provision of 360 jobs in Cumbria across the company, as well as further job roles relating to the needs of the company, such as haulage, repair and servicing. However, the number of direct jobs created by the quarry itself is likely to be modest. I consider it unlikely the company would cease operating were I to dismiss the appeal. It is likely it would simply source the raw material from further away.

109. The appellant pointed towards the avoidance of undue road mileage that would otherwise result from the sourcing of limestone outside of the area and estimates that there would be an annual saving of around 112,000 vehicle miles. However,

[12] *R (Wilkinson) v South Hams DC* [2016] EWHC 1860

this is based upon an output of 200,000 tonnes per annum, which may not be realised depending upon the final working scheme which is proposed. It is not clear what the saving would be, or what this would mean in terms of the emissions to air or any other environmental or public benefit which may derive from such a saving.

110. In my view the public interest benefits of the proposal if implemented do not outweigh the adverse impacts of the proposed development upon the conservation aims of the Habitats Directive and so the benefits do not justify those adverse impacts. Given my findings in respect of the SAC, there is little merit in going on to consider protected species and whether or not the proposed development is unlikely to be licensed.

Conclusion

111. There remains an extant planning permission for the winning and working of mineral. However, as set out above, the level of uncertainty as to what would be worked, when and how is such that it is simply not clear what conditions should be imposed and whether they would meet the policy tests. Furthermore, I cannot be satisfied, beyond all reasonable scientific doubt, that the development would not have adverse effects on the SAC. I am also not satisfied that there are no alternative solutions or that there are Imperative Reasons of Overriding Public Interest. Consequently, I find that the appeal should be dismissed.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Daniel Henderson (attended instead of Mr Kimblin KC on Day 4 of the Hearing)

Adam Perry

Richard Hunt

Michael Kurs

Julia Robinson

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Andrew Smith

Kelsey Blain

INTERESTED PARTIES:

Ros Berry: Chair of Blindcrake Parish Council

Jane Newman: Planning Consultant

John Wallace: Member of Quarry Action Group

Anne Taylor

Julia Aglionby

Paul Barnes

DOCUMENTS

1. Opening: Appellant
2. Opening: National Park Authority
3. Opening: Parish Council/Action Group
4. HM Land Registry Plan, Bundle F page 3
5. Letter, dated 9 June 2025 to the Company Secretary of Aggregate Industries (England) Limited.
6. Letter, dated 10 June 2025, to Mr Lowe
7. Email correspondence, dated 1 July 2025, from Natural England to the National Park Authority.
8. Bundle G
9. Legal Opinion, dated 10 July 2025
10. *Maximum Networks Ltd v Secretary of State for Communities and Local Government* [2018] EWHC 1933 (Admin).
11. *R. (on the application of Park Pharmacy Trust) v Plymouth City Council* [2008] EWHC 445 (Admin); [2008] 2 P. & C.R. 11
12. Conditions: Joint version 1
13. Conditions: Joint version 2
14. Conditions: 1966 version 1
15. Conditions: 1966 version 2
16. Submission of Julia Aglionby PhD