Addendum – Planning and Regulation Committee 20th July 2026

Agenda Item 6 - Land at Thrupp Farm, Radley MW.0041/23

1. A representation has been received from Winston Taylor International LLP (solicitors) with attached Counsel Opinion from Gregory Jones KC on behalf of a local resident. This is set out in full in Appendix 1.

2. Members are entitled to give consideration to the KC Opinion provided. However, it should be noted that this has been provided by a third party opposed to the ROMP application whose instructions to Counsel as set out in paragraph 3 of the Opinion are recorded as follows:

   My instructions explain that the client anticipates that any resumption of mineral extraction will cause harmful amenity impacts in the local area, and that the client's objective is to prevent the ROMP application being approved.

3. Should members be minded to, they could further defer determining the conditions to obtain the Council's own further Counsel's Opinion for which officers could instruct a KC. As previously recorded in the Minutes of the committee meeting on 23rd February 2026, additional legal advice would be a further opinion to be considered alongside the advice already obtained by or submitted to the Council, by the applicant and local residents. It would not provide a definitive answer to the lawful position.

4. The officer advice remains, taking into consideration the Council's own Counsel Opinion and advice previously provided to the committee and included in Appendix 1 to the Committee report, that the Committee can lawfully determine the conditions as set out in the Officer Recommendation.

5. Officers have also received correspondence from Layla Moran MP on behalf of local residents who has advised that she has written to the Secretary of State to ask for clarity over whether the issue of validity of the application was properly considered and what his conclusion was. She has also asked that the Council as Mineral Planning Authority meet with local residents to discuss their concerns and to better understand the interpretation of the ROMP permission.

6. Ms Moran's comments are welcomed and noted. However, if the Secretary of State was going to provide advice, officers would have expected them to do so with the response to the call-in request. With regard to engagement with the local community, officers have previously met with Radley Parish Council who are the elected representatives of the local community to discuss the ROMP application. Local residents have been able to comment on the application and their comments have included ones with relation to the validity of the ROMP permission and so the current application. Local residents also spoke at the Planning and Regulation Committee meeting on 23rd February and addressed this point before the committee. It is not therefore considered that local residents have not had the opportunity to raise their concerns directly with the Committee.

Local residents will also again have the opportunity to address the committee at its meeting on 20th July 2026.

Appendix 1 – Winston Taylor International LLP Letter

WINSTON TAYLOR.

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Date	Our reference	Your reference
9 July 2026	DEL108.U5	MW.0041/23

Application for determination of conditions to which mineral permissions will be subject with the reference MW.0041/23 relating to land known as Thrupp Farm, Radley, Abingdon, Oxfordshire (the "ROMP Application")

Dear Mr Periam

1. We act for the owner of the Wick Hall Estate, Radley, Abingdon, OX14 3NF (our "**Client**").

2. We write further to our letters of 25 April 2023, 13 September 2024, 18 January 2026, and 12 February 2026, and in connection with the County Council's Planning and Regulation Committee meeting to be held on 20 July 2026, at which, we understand, the ROMP Application will be considered.

3. This follows the Secretary of State's refusal to call in the application for its own determination and confirmation that the matter must be determined by the County Council as the mineral planning authority.

4. Our Client has repeatedly opposed the ROMP Application on the grounds that the application is not capable of determination, and these arguments have been set out in detail in our earlier correspondence. Our Client has now instructed Gregory Jones KC of Francis Taylor Building, who has considerable expertise in mineral and planning law, to provide his expert opinion on these matters. Please find his opinion enclosed.

5. Mr Jones concludes that the underlying mineral permissions, to which the ROMP Application relates, ceased to have effect on 1 November 2016 (except insofar as they impose restoration or aftercare conditions), and that the statutory phrase "at any time" cannot revive lapsed mineral permissions. The ROMP Application is not a valid application,

and it is not capable of determination by the County Council. The proper course, in the view of Mr Jones, is to inform the applicant that the application cannot be entertained, and that any future mineral working would require a fresh grant of planning permission or some other lawful basis.

6. Mr Jones further concludes that, should the County Council purport to determine the ROMP Application, a third party would have a realistic prospect of a successful judicial review claim.

7. We request that the ROMP Application is treated as incapable of determination by the County Council and is returned to the applicant. However, if the County Council requires further time to consider this matter, then the ROMP Application should be deferred at the Committee meeting on 20 July 2026, and no decision should be made until the County Council has carefully considered the legal opinion and taken legal advice on its conclusions. We also ask that the opinion be made public on the County Council's online register and appended to the officer's report to the planning committee.

8. If the County Council has any questions or wishes to discuss any matters raised in our previous correspondence or the enclosed legal opinion, please do not hesitate to contact Kate Little (Kate.Little@winston-taylor.com) and Emma Tait (Emma.Tait@winston-taylor.com) of this firm.

Yours sincerely

Winston Taylor International LLP

Winston Taylor International LLP

Enclosure: the legal opinion of Gregory Jones KC dated 8 July 2026

OPINION

RE: Land At Thrupp Farm, Radley, Abingdon, Oxfordshire

Introduction

1. I am instructed by Winston Taylor International LLP on behalf of the owners of the Wick Hall Estate, Radley, Abingdon, OX14 3NF, in relation to application MW.0041/23, described in the instructions as an application for the determination of conditions to which the underlying mineral permissions are to be subject.

2. The applicant is H Tuckwell & Sons Ltd. The mineral planning authority ("MPA") is Oxfordshire County Council. The instructions explain that the client's property is registered under title number ON259409 and that several industrial activities operate in the local area surrounding the client's property, including on land at Thrupp Lane and Thrupp Farm Quarry to which the ROMP application relates.

3. My instructions explain that the client anticipates that any resumption of mineral extraction will cause harmful amenity impacts in the local area, and that the client's objective is to prevent the ROMP application being approved. The instructions also explain that my lay client and its advisers have been objecting to waste processing and other amenity-harming operations locally and have been engaging with the MPA and neighbours who live locally to the Thrupp Farm Quarry site. My instructions state that those same neighbours have engaged directly with elected members of the MPA and Layla Moran MP.

4. The immediate practical context is that the Secretary of State has declined to call in the ROMP application and that the matter is expected to return to Oxfordshire County Council's planning committee. The instructions state that the ROMP application is to be considered at the committee meeting scheduled for 20 July 2026. I am asked to prepare this Opinion in a form which can be shared with the MPA and, if appropriate, appended to the committee report or otherwise circulated to members before they determine how to proceed.

Principal Issue

5. The principal issue is one of statutory construction and jurisdiction. The question is whether, where the MPA served a review notice under Schedule 14 to the Environment Act 1995 requiring the submission of an application by 31 October 2016, and where no such application was submitted by that date, the mineral permissions ceased to have effect on 1 November 2016 by operation of paragraph 7 of Schedule 14, save insofar as they imposed restoration or aftercare conditions. If they did, the further question is whether they could be revived or treated as extant by a later agreement

between the authority and Tuckwell made in or after 2022, or by the later submission and validation of the ROMP application in 2023.

6. I am also asked to advise on the following: whether the documents disclose any written extension agreed before the Review Date; whether the phrase "at any time" in paragraph 7 permits a post-Review-Date extension; whether public law, legitimate expectation, human rights or any other mechanism can restore permissions which have already ceased to have effect; what consequences flow from the MPA's failure to serve a written reminder before the Review Date; what assistance is obtained from *Vattenfall Wind Power Ltd v Scottish Ministers* [2009] CSIH 27; what procedural steps remain available to the authority if the permissions have ceased to have effect; and what risks, including judicial review and costs risks, would arise if the authority were nevertheless to approve or purport to determine the ROMP application.

7. I have considered the letter of instruction dated 12 June 2026 and the enclosures which have been identified in those instructions, including the title material, site plan, the mineral planning permission's schedule of conditions, the officer report, addenda, earlier representations to the MPA and Secretary of State, the MPA's letter seeking call-in, the applicant's representations resisting call-in, the Secretary of State's decision not to call in, and the advice of Ms Nina Pindham dated 1 July 2022, 15 January 2026 and 6 February 2026. I have also considered the relevant statutory wording, the statutory and policy purpose of the ROMP amendments, Hansard material, MPG14, and the authorities referred to below.

8. I should make clear at the outset that this Opinion is necessarily based upon the documents supplied and identified in the instructions. The most

important factual qualification is this. If there exists, but has not been disclosed, a written agreement made before 31 October 2016 by which the MPA and Tuckwell agreed a later specific date for the submission of the Schedule 14 application, that document would be highly material and would require reconsideration of parts of this Opinion. Subject to that qualification, I set out my opinion below.

Executive Summary

9. In my opinion, on the material presently available, the correct view is that the underlying mineral permissions ceased to have effect on 1 November 2016 by operation of paragraph 7 of Schedule 14 to the Environment Act 1995, except insofar as they imposed restoration or aftercare conditions. The statutory language is mandatory. It provides that where no application has been served by the first review date, or by such later date as may at any time be agreed in writing, each identified mineral permission "shall cease to have effect" on the day following the first review date or, as the case may be, the later agreed date.

10. I do not consider that the phrase "at any time" permits the authority and the applicant to revive a mineral permission after it has already ceased to have effect. The phrase permits the agreement of a later date so that the statutory consequence does not arise on the first review date. It does not confer a free-standing power to reverse the statutory consequence once it has arisen. There is a fundamental difference between agreeing a later date before cessation and purporting to resurrect a permission after cessation.

11. On the documents provided, no ROMP application was submitted by 31 October 2016. The only pre-deadline request for an extension identified in

the 1 July 2022 advice was not accepted. Indeed, as recorded in the instructions, the MPA's own later addendum clarified that earlier references to correspondence "within time" were not an assertion that a specific agreement had been reached before the Review Date, but rather a shorthand reference to the Council's view that it could agree a date "at any time".

12. I further consider that regulation 54 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 did not suspend the permissions in November 2016, because that regulation is only engaged where the authority, Secretary of State or inspector is dealing with a ROMP application or appeal arising from such an application. If no ROMP application had been made, there was nothing to suspend under that regulation. On the material as instructed, that was also the conclusion reached in Nina Pindham's 1 July 2022 advice.

13. Nor do legitimate expectation, Article 8, Article 1 of the First Protocol, Article 6, *Marleasing*, or any general principle of fairness provide a mechanism by which a permission which has ceased to have effect under a statutory code can be revived. Public law may prevent unfair departure from an existing representation where an authority has power to act, but it cannot create jurisdiction where Parliament has removed it. If the permissions ceased to have effect on 1 November 2016, the later 2022 agreement and the 2023 validation cannot confer jurisdiction on the authority to determine new conditions under paragraph 6 of Schedule 14.

14. The statutory purpose of the ROMP amendments strongly supports that conclusion. MPG14 states that the Environment Act 1995 introduced "new requirements for an initial review and updating of old mineral planning permissions and the periodic review of all mineral permissions thereafter",

and explains that mineral working is different from other forms of development because it is temporary, can last many years, its impact can change over time, and social standards can change, so that there is a "need for regular review so as to ensure that modern standards are met". The same guidance records that the earlier 1981 Act represented "a sea change" in minerals planning, but that the review and updating proposals "have not worked as well as intended"; that the Government undertook in the 1991 Environment White Paper to review the legislation and compensation arrangements; that the 1991 Act dealt with the oldest IDO permissions; and that it was then "essential to tackle the review and updating of permissions granted in the 1950s, 60s and 70s both to protect the environment and amenity, and to provide equal treatment between sites and mineral operators."

15. That statutory purpose is inconsistent with a construction under which a mineral permission may be allowed to cease, remain dormant in legal uncertainty for years, and then be revived by an after-the-event agreement between the MPA and operator. The purpose was regularisation, modernisation, environmental protection, equal treatment and certainty, not indefinite administrative elasticity.

16. The Scottish decision in *Vattenfall Wind Power Ltd v Scottish Ministers* [2009] CSIH 27 is binding in Scotland. In England and Wales, it should be treated either as binding on a first instance judge where the point is one of construction of materially common statutory language, or at the very least as authority of such high persuasive force that for practical purposes there is no material difference. That conclusion follows from *Re Hartland* [1911] 1 Ch 459, *Brooks v IRC* [1913] 3 KB 398 and *Riordan*

Communications Ltd v South Buckinghamshire District Council [2000] 1 PLR 45.

17. The failure to serve a reminder under paragraph 4 of Schedule 14 does not, in my view, preserve the permissions indefinitely or prevent paragraph 7 taking effect, provided the original paragraph 4 notice was validly served and sufficiently identified the permissions, the site, the review date, the requirement to apply, the consequences of failure to apply, and the right to seek postponement. The reminder is an important procedural safeguard, but on the facts as presently presented it is unlikely to be construed as a condition precedent to the operation of paragraph 7. That conclusion is subject to checking the content and service of the original review notice.

18. The fact that an Inspector may in 2014 have referred to, or proceeded upon, the existence of an extant permission does not have the legal effect of a certificate of lawful existing use or development, nor does it conclusively determine the lawfulness or continuing existence of the permission for all future purposes. *Reprotech* is important in this respect. Lord Mackay expressly agreed that a planning authority considering the scope of a permission under section 73 might have the scope of the permission "in view", but that "this does not mean" that it was making a statutory determination under section 64, "and still less, if the situation arose today under section 192".

19. If my analysis is correct, application MW.0041/23 is not a valid ROMP application capable of determination. The authority should not purport to determine conditions under Schedule 14. The proper course would be to inform the applicant that the application cannot be entertained because the permissions to which it purports to relate have ceased to have effect, and

that any future mineral working would require a fresh grant of planning permission or some other lawful basis.

20. If the MPA nevertheless approves or determines conditions on the ROMP application, there would, in my opinion, be a real and substantial risk of judicial review. A claimant would have an arguable case, and in my view a case with realistic prospects of success, that the authority acted without jurisdiction, misdirected itself as to paragraph 7, wrongly treated the permissions as merely suspended, unlawfully proceeded on the basis that a later agreement could revive extinguished permissions, and wrongly treated earlier appeal reasoning as a conclusive determination of lawfulness.

The Factual Chronology

21. The material planning permissions are described in the officer materials as permissions permitting the extraction of sand and gravel at Radley. My instructions are that DD1 and DD2 are the schedules of conditions to an earlier ROMP application, which were approved by deemed determination. They were approved by default by the MPA in 2000. I am instructed that, in accordance with the MPA's review notice dated 9 October 2015, the underlying mineral permissions to which the current ROMP application relates have the following references: ABG R129/71; RAD/3963; RAD/5498/5; 65/51; M/1/55; M/1/69; and M/2/69 (the "mineral permissions"). The officer report states that the last active extraction was carried out in around 1995, and that the site has since developed into an area containing lakes, wetland, woodland and other habitats.

22. My instructions state that the mineral planning permissions schedules confirm that the winning and working of minerals must cease no later than 21 February 2042, following which restoration and aftercare requirements take effect. That date is important because the applicant and authority have treated the permissions as still capable of authorising future extraction, subject to the ROMP process and the determination of updated conditions.

23. I am instructed that the Council issued a notice of periodic review in October 2015 and that no ROMP application was received by the MPA by the stated review date of 31 October 2016. A historic operator then submitted a ROMP application in January 2023, several years after the Review Date, and the MPA validated it.

24. The officer report later described the site as having entered automatic suspension on 1 November 2016. That description is not determinative. The legal question is not what label the Council used in November 2016, but what consequence the statute attached to the absence of an application and the absence of an agreed later date.

25. The committee materials show that the Council had previously pursued or contemplated prohibition order steps, and that in July 2022 the committee resolved that officers should seek to agree a date with H Tuckwell & Sons Ltd by which a ROMP application would be submitted. The further addendum records that, in subsequent correspondence, the agent for H Tuckwell & Sons Ltd agreed to submit the ROMP application by 28 February 2023 and that the valid submission was received on 22 February 2023.

26. The disclosed historical material provides important context to the review process. Following the Inquiry concerning the proposed Prohibition Order, the Inspector concluded in July 2014 that the relevant Thrupp Farm ROMP application had been deemed determined on 28 July 2000. The Inspector recorded that Oxfordshire County Council and the principal objector had ultimately adopted a common position that the statutory deeming provisions had taken effect and that, accordingly, there was no stalled ROMP capable of supporting a Prohibition Order. The Inspector accepted that position and recommended that the Prohibition Order should not be confirmed.

27. The significance of that conclusion is increased by the Council's subsequent conduct. By its Review Letter issued in October 2015, the Council expressly stated that there were "currently two overlapping permissions that were deemed to have been granted by default". The Council further stated that DD1 had been granted by default on 1 July 2000 and DD2 on 28 July 2000, but that both permissions should be treated as having been granted on 28 July 2000 because of the overlap between them.

28. Consistently with that position, the Council served a formal Notice of Site Subject to Periodic Review dated 9 October 2015 pursuant to Schedule 14 of the Environment Act 1995. The Notice expressly identified both the material planning permissions as permissions "deemed to have been granted on 28 July 2000". The Notice required submission of a fresh application for determination of conditions by 31 October 2016 and warned that, absent such an application, the permissions would cease to have effect except insofar as they imposed restoration or aftercare conditions.

29. Those documents demonstrate that, by October 2015, the Council itself was proceeding on the basis that the mineral planning permissions existed as deemed permissions and that the operative statutory mechanism was the Schedule 14 periodic review process. The review deadline specified by the Council was 31 October 2016.

30. The pre-review correspondence presently disclosed does not appear to reveal any express agreement extending that deadline. On 1 December 2015, Mr Salmon, agent for the operator, sought an extension of time. On 11 December 2015 the Council responded by stating that the applicant was aware of the timetable for providing a ROMP application "which is to 31st October 2016" and stated that there remained sufficient time available for the Environmental Impact Assessment and submission to be completed by that date. That correspondence appears to show a request for an extension rather than an agreement to one.

31. By contrast, the clearest documentary evidence of an express agreement currently disclosed is the exchange of correspondence in August 2022. Following the Committee resolution of 18 July 2022, the Council sought confirmation that the application and Environmental Statement would be submitted by 28 February 2023. On 30 August 2022 the operator's representative responded: "I can agree to this submission date." Read objectively, that exchange is capable of constituting a written agreement for submission by 28 February 2023.

32. The chronology is therefore significant. The Council's formal review notice identified 31 October 2016 as the operative statutory deadline. The clearest extant written agreement presently identified was reached almost six years

later. Unless there exists additional material not presently disclosed showing that a later review date had lawfully been agreed before expiry of the 2016 deadline, the August 2022 agreement does not itself explain how the statutory consequences identified in the review notice were avoided.

33. The important point for present purposes is that the 2022 agreement was made more than five years after the Review Date. It can only assist the applicant if paragraph 7 permits the making of a later-date agreement after the first review date has passed and after cessation would otherwise have occurred. If paragraph 7 does not have that effect, the 2022 agreement was ineffective to revive the permissions.

34. The Secretary of State declined to call in the ROMP application. That refusal did not determine the legal status of the material planning permissions. The refusal simply returned the matter to the MPA for determination. In my view, the authority remains obliged to satisfy itself as to its jurisdiction before taking any substantive step on the ROMP application.

The Statutory Framework

Statutory Context

35. Paragraph 7 of Schedule 14 to the Environment Act 1995 is the central provision. It provides, so far as material, as follows:

> "Where no application under paragraph 6 above in respect of a mining site has been served on the mineral planning authority by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the authority, each mineral

> permission—
> (a) relating to the site; and
> (b) identified in the notice served in relation to the site under paragraph 4 above,
> shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date."

36. Three aspects of that language are of particular importance. First, the provision is triggered by the absence of an application served by the relevant date. Secondly, the relevant date is either the first review date or a later date agreed in writing between the applicant and the authority. Thirdly, the consequence is not discretionary. Each identified mineral permission "shall cease to have effect" on the day following the relevant date, save for restoration or aftercare conditions.

37. Paragraph 4 of Schedule 14 provides for service of the notice of first periodic review. The notice must identify the mining site, identify the mineral permissions relating to the site, state the first review date, state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions are to be subject, explain the consequences if no application is made by that date, and explain the right to apply for postponement of the first review date. It also provides for a written reminder where no paragraph 6 application has been received by the date falling eight weeks before the first review date.

38. Paragraph 5 contains a specific postponement mechanism. It enables an application to be made for postponement of the first review date and provides for the authority to agree to postponement where it considers existing conditions satisfactory. Paragraph 6 governs the application for determination of conditions. Paragraph 7 then supplies the statutory

consequence if no paragraph 6 application is made by the first review date or by such later date as may at any time be agreed in writing.

39. The structure is therefore coherent. The authority gives notice. The recipient is warned of the date and consequence. A postponement route is available. A later date may be agreed in writing. If no application is made by the operative date, the permission ceases to have effect save for restoration and aftercare. The statutory code is designed to produce a definite legal outcome, not continuing uncertainty.

40. It is necessary specifically to address the question whether, where the first periodic review date has passed, no application under paragraph 6 has been made, and no written agreement extending time has been reached before that date, the words in paragraph 7 of Schedule 14 to the Environment Act 1995 "or by such later date as may at any time be agreed upon in writing between the applicant and the authority" nevertheless permit the parties subsequently to agree a later date so as to avoid or undo the statutory consequence that the relevant mineral permissions "shall cease to have effect". In my judgement they do not.

41. Paragraph 5 of Schedule 14 deals expressly with an application for postponement of the first review date. It provides that a qualifying owner or mineral interest holder may apply for postponement "no later than the day upon which expires the period of three months from the day upon which notice was served upon him under paragraph 4". It further provides that the application must identify the existing conditions, explain why they are considered satisfactory, and state the proposed substituted date. Paragraph 5(5) then contains a deemed approval mechanism where the authority has not notified its decision within three months of receiving the

postponement application "or within such extended period as may at any time be agreed upon in writing between the applicant and the authority". The phrase "at any time" therefore appears in a procedural context where there is already a pending application and a running period for determination. Its natural function is to allow flexibility in the management of that pending process, not to confer a free-standing power of revival after statutory default.

42. Paragraph 7 is different in operation but identical in legislative purpose. It provides that where no application under paragraph 6 has been served on the mineral planning authority "by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the authority", each mineral permission relating to the site and identified in the paragraph 4 notice "shall cease to have effect", save in so far as it imposes restoration or aftercare conditions, "on the day following the first review date or, as the case may be, such later agreed date". The structure is important. The paragraph identifies the date by which the paragraph 6 application must be served; it then attaches an automatic consequence to non-service by that date. Once that date has passed without an application and without an agreed later date, the statutory consequence has occurred. The permission has ceased to have effect.

43. The contrary construction would treat the words "at any time" as authorising a retrospective agreement after lapse, thereby enabling the parties to undo the statutory extinction of the permission. That is not what the language naturally provides. The phrase "such later date" refers to a date by which the paragraph 6 application is to be served. It is concerned with substituting a later deadline before the sanction bites. It is not expressed as a power to reinstate a permission which has already ceased to

have effect. Had Parliament intended to confer such a striking power of revival, one would expect clear language to that effect.

44. That construction is reinforced by paragraph 4. The notice of first periodic review must state the first review date, state that it is the date by which an application must be made for approval of the conditions, and "explain the consequences which will occur if no such application is made by that date". Paragraph 4 also requires the authority to explain the right to apply for postponement of the first review date and give the date by which such an application has to be made. The paragraph 4 notice is therefore framed around prospective compliance with known deadlines and known consequences. It is inconsistent with that scheme to say that the consequences explained in the notice are not final consequences at all but may be displaced indefinitely by a later agreement after default.

45. That conclusion is reinforced by ordinary principles of statutory construction. The court should construe the provision as part of the scheme as a whole. Paragraphs 4, 5, 6 and 7 together establish a sequence: notice of review; opportunity to seek postponement; application for determination of modern conditions; and, in default, cessation of the permission. The phrase "at any time" should be read within that sequence. It gives procedural flexibility as to the agreement of a later date; it does not confer a substantive power to undo the consequence which the Act states shall follow once the relevant date has passed.

46. I would therefore conclude that, on the proper construction of paragraph 7, where no application under paragraph 6 has been served by the first review date, and no later date has by then been agreed in writing, the relevant

permissions cease to have effect on the following day, except in so far as they impose restoration or aftercare conditions. The words “at any time” do not permit the parties to revive the permissions thereafter. They operate only within the machinery of an extant periodic review process, before the statutory consequence of default has taken effect.

47. If the applicant’s construction were right, there would be no finality in paragraph 7. A mineral permission which had ceased to have effect on the day after the review date could nevertheless be revived by agreement months or years later. That would be a surprising consequence in a regime whose object was to secure the “effective and speedy implementation” of review, to ensure “regular review” so that “modern standards are met”, and to remedy the failure of earlier legislation which had stalled because it lacked effective time limits. I turn to examine the statutory purpose.

Statutory Purpose

48. The view I take on the language of paragraph 7 is not a merely linguistic point. This conclusion is supported by the statutory purpose of the ROMP regime. The legislative purpose was to secure the timely review and modernisation of mineral permissions which, because of their age and inadequate conditions, could operate to environmental standards no longer acceptable. The Supreme Court’s description in *G Hamilton (Tullochgribban Mains) Ltd v Highland Council* [2012] UKSC 31 is directly in point. Lord Walker, giving the judgment of the Court, stated that “the principal legislative purpose of these provisions is to ensure that old mineral permissions are made subject to conditions meeting modern environmental standards”, and added that some such permissions were granted “subject to conditions less stringent and less precise than are

appropriate today". He also identified a subsidiary purpose of achieving "better and more reliable records of old planning permissions for mineral working".

49. The official Minerals Planning Guidance ("MPG") issued after enactment is to like effect. MPG14 stated that the Environment Act 1995 introduced "new requirements for an initial review and updating of old mineral planning permissions and the periodic review of all mineral permissions thereafter", and that the Secretaries of State attached importance to the "effective and speedy implementation" of the procedures and policies contained in the guidance. It explained that mineral working is different from other development because it may last for many years, its impact may change over its lifetime, and societal standards may also change; there is therefore a "need for regular review so as to ensure that modern standards are met". It stated that "mineral working is different from other forms of development," because it "can only take place where minerals are found to exist"; it is "a temporary use of land, although sometimes lasting for many years"; and consideration must be given to "ensuring restoration of the land to a beneficial after-use." It further stated that the operation of a mineral site can significantly change its impact over its lifetime and that "the standards of society can also change." The conclusion drawn in the guidance is that "there is therefore need for regular review so as to ensure that modern standards are met."

50. MPG14 also explained the legislative history. It records that following the Stevens Committee in 1976, the Government reflected the need for review in the Town and Country Planning (Minerals) Act 1981, which imposed a duty on MPAs periodically to review mineral sites and make such orders as they considered necessary to update planning permissions. It then

records that the 1981 Act represented “a sea change in the approach to minerals planning”, but that the proposals for review and updating “have not worked as well as intended.” It then stated that, after dealing with IDO permissions under the 1991 Act, “it was essential to tackle the review and updating of permissions granted in the 1950s, 60s and 70s both to protect the environment and amenity, and to provide equal treatment between sites and mineral operators”. That statement is important because it confirms that the statutory structure was designed to secure review and updating, not to allow permissions to escape review through indefinite postponement or retrospective cure.

51. That ministerial and policy background is entirely inconsistent with treating paragraph 7 as a provision which permits indefinite revival by administrative agreement. The purpose was not to leave old permissions in a state of suspended animation until a later authority and operator chose to regularise them. The purpose was to impose a statutory discipline: either the operator engages with the review process by the review date, or by a lawfully agreed later date, or the permission ceases to have effect save for restoration and aftercare. The MPG14’s summary of the periodic review provisions is also inconsistent with the suggested broad construction of “at any time”. It states that land and relevant mineral owners of active Phase I sites must submit new schemes of conditions by the specified date “or the planning permissions will cease to have effect” and makes the same point in relation to active Phase II sites. The guidance thus treats the deadline and the consequence of non-compliance as real and operative.

52. Whilst guidance cannot, of course, change the law, MPG14 supports a purposive construction of paragraph 7. The words “or by such later date as may at any time be agreed upon in writing” should be read as permitting

the applicant and authority to agree a later date before the permission has ceased to have effect. They do not authorise the authority and operator, after the first review date has passed and after no paragraph 6 application has been served, to resuscitate the permission by a retrospective agreement. Such a reading would deprive paragraph 7 of its intended effect, undermine the statutory deadline, and frustrate the legislative purpose of securing timely review and modernisation of minerals permissions.

Parliamentary Material

53. Lastly, if and in so far as necessary, on the basis that the statutory words are at least arguably ambiguous in their application to the present question, and that the statements relied upon identify the mischief and legislative purpose rather than contradicting the statutory text[1]. The judicial statement of the statutory purpose in *G Hamilton (Tullochgribban Mains) Ltd* is consistent with the Parliamentary material. In the House of Lords debate on 7 March 1995, Viscount Addison explained that the proposed provisions were directed at "the environmental problems of old mineral permissions granted between 1948 and 1981". He said that such permissions "often lack proper working conditions, such as noise limits, and frequently contain no requirement for the restoration of sites", and that by operating to lower standards than other mineral permissions "they also introduce distortions in the market". He further stated that the issue required "urgent action" if

[1] The Parliamentary materials referred to above are only relied upon, if and insofar as necessary, in accordance with the principles stated in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 (HL). In that decision, the House of Lords relaxed the former exclusionary rule and held that reference may be made to statements in Hansard as an aid to construction where three conditions are satisfied: first, that the statutory provision is ambiguous or obscure or leads to an absurdity; secondly, that the material relied upon consists of statements by the responsible Minister or other promoter of the Bill; and thirdly, that those statements are clear as to the point at issue. The function of such material is not to contradict or override the statutory language, but to illuminate the mischief at which the provision is directed and to confirm the legislative intention where the statutory wording admits of more than one possible meaning.

"serious environmental consequences" were to be avoided, and that the introduction of a statutory time limit was designed to ensure that "real progress could be achieved". That same debate is also significant because it identifies the failure of the earlier 1981 regime as being the absence of effective time limits. Viscount Addison stated that the Town and Country Planning (Minerals) Act 1981 had placed a statutory duty on mineral planning authorities to review mineral sites, but that those measures "have failed as they establish no time limit on the duty", with the result that "very little progress has been made in reviewing permissions that cause damage". That is relevant contextual material. It shows that the introduction of time limits was not incidental: it was central to the legislative remedy. A construction which allows the deadline to be extended after default and after lapse would reintroduce the very mischief which the 1995 Act was designed to cure.

54. During the Commons debate on 27 June 1995, Sir Paul Beresford, speaking for the Government, stated that the draft guidance would make clear that the Government intended industry and mineral planning authorities to follow the same principles for updating pre-1982 sites as had been followed for interim development orders, and that this would ensure "equal treatment between the sites and the operators". He also stated that the Government recognised, as did the industry, "the importance of introducing conditions — and the industry is accepting those conditions for the sites — for environmental reasons".

55. The Commons debate on "Guidance on Old Mineral Planning Permissions" is also material. Ms Ruddock described old mineral permissions as giving rise to "poor and outdated standards", and said that local communities suffered from "dust, dirt, frequent and constant noise,

and from heavy lorries with heavy loads", adding that rural communities "need and deserve the upgrading of old mineral planning permissions." Sir Paul Beresford, responding for the Government, referred to consultation on draft guidance and said that the Government intended industry and MPAs to follow the same principles for updating pre-1982 sites as had been followed for IDO sites, to ensure equal treatment between sites and operators.

56. The proper conclusion to draw from the statutory scheme, the guidance and Hansard is that the ROMP regime is intended to secure certainty, modernisation and environmental control. It is not intended to provide operators with an indefinite opportunity to regularise old permissions after the statutory consequence of non-compliance has already occurred. Paragraph 7 is the enforcement mechanism which makes that statutory discipline effective.

57. If the applicant's construction were correct, paragraph 7 would lose much of its practical force. An owner or operator could fail to submit a ROMP application by the Review Date, allow years to pass, and then invite the MPA to agree a later date on the footing that the permission had never truly ceased. Such a construction would create precisely the uncertainty that the statutory scheme was designed to remove.

Question (a): the status of the Mineral Permissions as at 1 November 2016

58. In my opinion, on the facts presently disclosed the mineral permissions ceased to have effect on 1 November 2016, save insofar as they imposed restoration or aftercare conditions. That conclusion follows directly from

paragraph 7 if, as appears to be common ground, no application was served by 31 October 2016 and no later date had by then been agreed in writing.

59. The words “shall cease to have effect” are ordinary mandatory words. They do not mean “shall be suspended”. They do not mean “shall remain capable of revival”. They do not mean “shall cease to authorise development unless and until the parties later agree a submission date”. Parliament used definitive language and included an express saving for restoration and aftercare conditions. That saving would be unnecessary if the permissions merely entered an administrative state of suspension.

60. The phrase “on the day following the first review date” is equally important. It identifies the time at which cessation occurs. If there is a later agreed date, the permission ceases on the day following that later agreed date. If there is no later agreed date, it ceases on the day following the first review date. On the presently available facts, that day was 1 November 2016.

61. I therefore do not accept that the permissions remained fully extant from 1 November 2016 merely because the authority later proceeded on the basis that they had entered suspension. The authority’s own legal advice of 1 July 2022 accepted that regulation 54 suspension was not available where no ROMP application had been made. That concession is in my view correct. It follows that the Council’s November 2016 description of the site as suspended cannot bear the legal weight placed upon it.

Question (b): whether there is evidence of an extension agreed before the Review Date

62. The subsequently disclosed Review Letter, Review Notice and Environmental Information Regulations material materially reinforce that conclusion. The Council's own documents show that it regarded the material planning permissions as deemed permissions and required a fresh Schedule 14 application by 31 October 2016. Yet the documents presently disclosed do not identify any written agreement reached before that date postponing the review deadline.

63. I have not seen any document which, in my opinion, evidences an agreement before 31 October 2016 to extend the date for submission of the ROMP application to a later specified date. The instructions record that the client is not aware of any further documents evidencing such agreement, despite requests to the MPA and Environmental Information Regulations requests made by neighbours.

64. The only exchange identified in the advice of 1 July 2022 was the 1 December 2015 exchange in which the applicant's agent asked whether the Council would agree an extension of time to provide the ROMP conditions. No date was proposed. The Council's officer responded that the applicant was aware of the timetable for providing a ROMP application by 31 October 2016 and that there was sufficient time available for the EIA to be carried out and the submission made by the due date. That exchange is not an agreement to a later date. It is, if anything, a refusal to extend. It states that there is sufficient time to meet the existing deadline. It does not identify any later date. It does not record agreement to postpone. It does

not purport to exercise paragraph 5. Nor does it satisfy paragraph 7 as an agreement upon "such later date".

65. I have considered the point in the January 2026 addendum referring to correspondence "within time". The subsequent addendum is said to have clarified that "within time" was shorthand for a course of conduct which led the Council to determine that it could agree a date "at any time" in accordance with paragraph 7, and not an assertion that a specific agreement had been reached before the Review Date.

66. If the MPA asserts that there was a pre-31 October 2016 written agreement to extend time, it should disclose it and identify the later date agreed. In the absence of such disclosure, committee members should proceed on the basis that no such agreement has been evidenced.

67. Indeed, the disclosed material tends in the opposite direction. The 2015 correspondence shows the applicant seeking additional time and the Council responding by reference to the existing deadline rather than by identifying a later agreed date. It is therefore difficult, on the present evidence, to identify any document satisfying the statutory requirement for a written agreement to a later review date before the occurrence of the statutory deadline.

Question (c): whether an extension could be agreed after the Review Date

68. In my opinion, an extension could not validly be agreed after the Review Date if, by that point, paragraph 7 had already operated to make the

permissions cease to have effect. The phrase "or by such later date as may at any time be agreed upon in writing" must be construed as referring to an agreement made before the statutory consequence occurs. It is a power to agree a later operative date, not a power to undo cessation after it has occurred. The disclosed material serves to sharpen the issue. The Council's formal Notice of 9 October 2015 expressly identified 31 October 2016 as the relevant deadline and identified cessation as the statutory consequence of non-compliance. On the presently disclosed documents, the first clear written agreement emerged only in August 2022. The practical effect of the applicant's and Council's construction is therefore not merely to permit a modest extension of time but to permit revival of permissions almost six years after expiry of the review date. That factual context, in my view, tends to reinforce rather than weaken the conclusion that paragraph 7 was not intended to operate retrospectively in the manner suggested.

69. For the reasons I have given above the grammatical structure of paragraph 7 supports that conclusion. The paragraph asks whether an application has been served by the first review date, or by such later date as may be agreed. It then provides that the permission shall cease on the day following the first review date or, as the case may be, such later agreed date. This contemplates two pathways. Either no later date exists, and cessation occurs after the first review date; or a later date exists, and cessation occurs after that later date if no application is made. It does not contemplate a third pathway in which cessation occurs, is then set aside by later agreement, and the permission is treated as having remained alive.

70. The contrary interpretation would produce serious uncertainty. A mineral permission could apparently cease to have effect for years or decades, only to be revived by private agreement between the authority and an operator

long after local residents, landowners, public authorities and the development plan process had proceeded on the basis that extraction rights had gone. Such an interpretation would be contrary to the evident object of the ROMP regime, which is to bring old mineral permissions under modern conditions within a certain statutory framework. In forming this view, I have not overlooked the words “at any time”. They must be given meaning. For the reasons I have given above, in my view, they mean that the agreement to a later date is not confined to the formal paragraph 5 postponement mechanism or to a narrow window shortly after service of notice. The authority and applicant may agree a later date at any time before paragraph 7 has operated to extinguish the permission. The words do not mean that a permission that has already ceased to have effect can be revived at any time in the indefinite future.

71. Accordingly, I respectfully disagree with Ms Nina Pindham’s conclusion that the Council could agree “tomorrow” an extended deadline ten years in the future. That analysis may give effect to the words “at any time”, but it does so at the expense of the equally important words “shall cease to have effect” and “on the day following the first review date”. A construction must give coherent effect to the whole sentence, not isolate one phrase from the statutory consequence which follows.

Question (d): revival, legitimate expectation, human rights and public law

72. I do not consider that there is any statutory mechanism by which a mineral permission which has ceased to have effect under paragraph 7 may be revived. The statute expressly saves restoration and aftercare conditions. It does not save the working permission. It does not provide for revival. It

does not provide that a later agreement may restore the permission. It does not provide that validation of a later ROMP application cures the failure to apply by the Review Date.

73. My conclusion is supported by the reasoning of the House of Lords in *R (Reprotech (Pebsham) Ltd) v East Sussex County Council* [2002] UKHL 8, [2003] 1 WLR 348. The case concerned an attempt to rely upon officer advice and a committee resolution as amounting, in substance, to a binding determination that no further planning permission was required. The House of Lords rejected that argument. The importance of the decision for present purposes lies in its insistence that, where Parliament has created a statutory mechanism for determining the legal status of land, that mechanism cannot be bypassed by informal representations, administrative assumptions, reliance, estoppel, or subsequent conduct.

74. Lord Hoffmann's reasoning is directly relevant to the present issue. His central point was that planning control is not an ordinary private law field in which the parties' mutual dealings can fix their legal position *inter se*. It is a public law regime, created by statute, operating in the public interest and affecting landowners, neighbours, public authorities and the wider public. For that reason, the legal status of land must be determined by reference to the statutory code, and not by treating informal statements or administrative dealings as if they had the legal effect of a statutory determination. Lord Hoffmann expressed the point in the well-known formulation that "it is unhelpful to introduce private law concepts of estoppel into planning law". In this case paragraph 7 of Schedule 14 does not merely regulate private relations between the mineral planning authority and the operator. It prescribes a statutory consequence affecting the status of the mineral permissions themselves. If no application is served

by the first review date, or by such later date as has been agreed in writing before the consequence takes effect, the identified permissions "shall cease to have effect", except insofar as they impose restoration or aftercare conditions. Once that statutory consequence has occurred, there is no extant working permission to which a later paragraph 6 application can attach.

75. Accordingly, in my view *Reprotech* supports the distinction which I draw, namely, a planning authority may, while it still has power to act, make decisions which attract public law duties of fairness. It may also make representations which, in an appropriate case, are relevant to legitimate expectation. It cannot, by representation, agreement, conduct, validation, committee resolution, or informal administrative assumption, alter the legal effect which Parliament has attached to non-compliance with a statutory condition. If paragraph 7 caused the material planning permissions to cease to have effect on 1 November 2016, the mineral planning authority could not later confer upon itself jurisdiction by agreeing in 2022 that Tuckwell might submit an application by February 2023. The point is not simply that estoppel is unavailable as a technical plea. It is that the statutory scheme must be allowed to operate according to its terms. To hold otherwise would permit the authority and an operator, by a later bilateral arrangement, to undo the effect of a statutory provision designed to secure certainty, modernisation and finality in the review of old mineral permissions. That approach would be inconsistent with *Reprotech* because it would allow administrative conduct to achieve a result which the statute itself does not authorise.

76. The modern law of legitimate expectation is important, but it is concerned with fairness in public administration. It may arise where a public authority

has made a clear, unambiguous and unqualified representation, or has adopted a settled practice, and a person has relied upon it. The doctrine does not ordinarily permit a public authority to act contrary to statute. It is a constraint on the lawful exercise of public power, not a source of power where no power exists. That distinction was itself reflected in *Reprotech*. Lord Hoffmann did not deny that public law might protect legitimate expectations in appropriate circumstances. Rather, he rejected the transposition of private law estoppel into planning law and located any protection within public law principles. The consequence is that legitimate expectation may regulate the fairness of a decision which the authority has power to make. It cannot require or indeed allow the authority to exercise a jurisdiction which the statute has removed. In the present case, if paragraph 7 operated on 1 November 2016, there was thereafter no jurisdiction under paragraph 6 to determine conditions for continued mineral working.

77. In expressing her opinion, Ms Nina Pindham relied upon *Re Finucane* [2019] UKSC 7 for the proposition that where a clear and unambiguous undertaking has been made, the authority will not be permitted to depart from it unless it is fair to do so. That principle is not in dispute. The difficulty is its application here. Even if the Council had encouraged the operator to continue preparing a ROMP application, such encouragement could not override paragraph 7 if paragraph 7 had already extinguished the permissions. Moreover, a legitimate expectation ordinarily requires a clear and unambiguous representation. A course of correspondence and committee discussion which did not identify a later date before 31 October 2016 is a doubtful foundation for an expectation that the statutory consequence would never arise.

78. The point is reinforced by the distinction between an expectation as to procedure and an expectation as to substantive legal status. At most, the operator might say that it had an expectation that the Council would consider a ROMP application if submitted. But if in law the permissions had already ceased, the Council could not lawfully determine that application. A legitimate expectation cannot require or empower an authority to do that which the statute does not permit. If the operator has suffered prejudice by relying on the Council's encouragement, that may found an argument in private or public law in some other form or else a finding of maladministration against the Council. It does not however restore the permissions.

79. I accept that the applicant may say that it has incurred expenditure in preparing environmental material and may suffer prejudice if the permissions are treated as having ceased. That is relevant to forensic and litigation risk, but it does not answer the jurisdictional question. The applicant knew, or was fixed with knowledge, that the review notice required an application by 31 October 2016. It could have submitted an application, applied properly for postponement, or secured a written later date. If it did none of those things, the ensuing statutory consequence cannot readily be characterised as unfairness imposed without warning.

80. I also do not consider that Article 1 of the First Protocol to the European Convention on Human Rights requires a different result. A mineral permission may be a "possession" for Convention purposes. Article 1 of the First Protocol provides that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions" and that no one shall be deprived of possessions except in the public interest and subject to the

conditions provided for by law. But the content of the possession is defined by the domestic legal framework which creates and regulates it.

81. A mineral planning permission is not an absolute private law estate. It is a statutory planning right. Its incidents, duration, conditions, reviewability and consequences of non-compliance are all defined by statute. If the Environment Act 1995 provides that a permission shall cease to have effect where no application is made by the first review date or later agreed date, that is part of the statutory definition of the right. The operation of paragraph 7 is therefore not an external expropriation of an otherwise unconditional right. It is the operation of the condition imposed by Parliament on the continuing effect of that right.

82. The same answer applies to Article 8. Article 8 protects private and family life, home and correspondence. It is difficult to see how the operator's Article 8 rights would be materially engaged by the loss of a mineral permission. If Article 8 were engaged at all, the interference would be in accordance with law, namely paragraph 7 of Schedule 14, and would pursue legitimate planning, environmental and public interest objectives. Conversely, the client and neighbouring occupiers may themselves point to amenity, environmental and home-life interests affected by the possible resumption of mineral extraction. Article 8 therefore does not provide any reason to construe paragraph 7 as containing an unstated revival power. Nor in my view does section 3 of the Human Rights Act 1998 alter the result. Section 3 requires primary and subordinate legislation to be read and given effect in a way which is compatible with Convention rights so far as it is possible to do so. That interpretive obligation is strong, but it does not permit the court to adopt a meaning inconsistent with a fundamental feature of the legislation. It does not allow the court to read

into paragraph 7 an unexpressed power to revive permissions which have already ceased to have effect. The same is true of *Marleasing SA v La Comercial Internacional de Alimentación SA* [1990] ECR I-4135. If retained or assimilated EU law or general interpretive principles are invoked, they cannot require a domestic court to contradict the operative language of a domestic statutory scheme where the consequence is clear. They may assist in choosing between available meanings. They cannot supply an omitted statutory mechanism of revival. In any event I can see no provision of retained EU that would engage the *Marleasing* principle.

83. The later 2014 Inspector's decision is also relied upon by Ms Nina Pindham in her January 2026 email. She states that the Inspector's decision on appeal very clearly concluded that there was an extant consent and that the decision stands because any challenge would be well out of time. That point requires caution. A 2014 decision pre-dated the 2015 review notice and the 2016 review date. It may establish that the mineral planning permissions were then extant. It cannot determine whether they ceased to have effect on 1 November 2016 after no application was submitted by the review date. Unless the 2014 decision decided some issue which legally precludes the operation of paragraph 7, and I have seen nothing suggesting that it did, it does not answer the present question. This point is also consistent with *Reprotech*. An Inspector's observations or reasoning in an earlier appeal may be relevant background, but unless the Inspector was exercising the statutory jurisdiction to determine lawfulness, or unless the matter forms part of the operative statutory decision in a way which binds the parties, such observations cannot have the same effect as a formal statutory determination. In particular an earlier statement that a permission was extant cannot preclude the later operation of paragraph 7 where the

statutory review date subsequently passed without a valid application or agreed later date.

84. The point is not that an Inspector's decision is legally irrelevant. It may be material. It may be a planning judgement which binds the parties as to the outcome of that appeal. It may also give rise to public law consequences if a party seeks to re-open what was actually decided. A statutory certificate of lawfulness under statutory procedure is contained in sections 191 and 192 of the Town and Country Planning Act 1990. Indeed, *Reprotech* concerned a waste treatment plant where the issue was whether electricity generation would amount to a material change of use requiring planning permission. No formal application for a statutory determination under section 64 of the 1990 Act was made. Instead, the authority considered a section 73 application to vary a condition. The House of Lords held that the committee resolution and officer views did not amount to a statutory determination that no further permission was required. Lord Mackay expressly addressed the point. He said that, in carrying out its section 73 duty, the authority would require to have in view the scope of the permission granted in deciding whether different conditions should be attached, and that in that case, if the committee had taken the view that generation of electricity was not permitted, it could not sensibly have resolved as it did. But he continued:

> "But this does not mean that in doing so, they were making a decision under section 64 and still less, if the situation arose today under section 192 of the legislation now in force."

85. That passage is directly applicable by analogy. An Inspector determining an appeal may need to proceed on an understanding of the planning history and the apparent scope of a permission. But that does not mean that the

Inspector is making a statutory determination under section 191 or section 192. It simply means that the Inspector is deciding the appeal before him or her on the basis of the matters relevant to that appeal. The distinction matters because a certificate of lawfulness is a specialised statutory mechanism. Under section 191 or section 192, the applicant must make a formal application for a certificate specifying the land and the use, operations or other matter in question. The local planning authority, or Inspector on appeal, determines the lawfulness of that specified use, operation or matter. If granted, the certificate has a statutory conclusiveness which an ordinary appeal decision does not have.

86. *Reprotech* also emphasises the importance of public law procedures in planning. Lord Mackay said that where public authorities are fulfilling statutory duties or exercising statutory discretions, the public interest in their activities and the effect on members of the public who are not parties to the particular process require the law to differentiate clearly between such activities and those in which only the interests of the directly involved parties are considered. He agreed with Lord Hoffmann that "the time has come for public law in this area to stand upon its own two feet." That principle is important here. A CLEUD or CLOPUD procedure gives notice, defines the question, creates a certificate if lawfulness is established, and carries statutory consequences. An ordinary appeal decision letter does not necessarily perform those functions. The Inspector may express a view on the planning context or proceed on an assumption about extant permission, but that is not the same as issuing a certificate that conclusively determines lawfulness.

87. The fact that the period for challenging the decision letter has passed does not transform the decision letter into a certificate of lawfulness. It means

that the decision itself can no longer ordinarily be quashed by statutory challenge or judicial review. It does not convert every proposition of law or planning background contained in its reasoning into a conclusive statutory determination for all future purposes.

88. This is particularly so where the later question is different from the question before the Inspector. If the 2014 Inspector proceeded on the basis that the material planning permissions were then extant, that may have been correct as at 2014. But the present question is whether the permissions ceased to have effect on 1 November 2016 following the 2015 review notice and the failure to submit a ROMP application by 31 October 2016. The 2014 decision could not have determined that later statutory consequence. Even if the Inspector's 2014 reasoning included statements about the existence or lawfulness of the permission, those statements cannot preclude the operation of paragraph 7 in 2016. The statutory event post-dated the appeal decision. A decision that a permission existed in 2014 does not decide whether it ceased to have effect in 2016.

89. Accordingly, the MPA should not treat the 2014 Inspector's decision as if it were a CLEUD. If the applicant wished to obtain a conclusive determination of lawfulness, the statutory route was and remains the certificate procedure, subject to the limits of the statutory scheme. An Inspector's decision letter in a different appeal does not supply that conclusive status.

90. I therefore conclude that neither estoppel, nor legitimate expectation, nor human rights, nor the 2014 Inspector's decision, nor the Council's subsequent validation or conduct can restore permissions which, on the better construction of paragraph 7, ceased to have effect on 1 November

2016. The statutory question remains whether the permissions ceased on that date. If they did, there is no public law doctrine by which they can be revived.

Question (e): the failure to serve the written reminder

91. The instructions ask specifically about the MPA's failure to serve a written reminder under paragraph 4 of Schedule 14. Paragraph 4 provides, in substance, that where the authority has served notice and has received no paragraph 6 application by the date falling eight weeks before the first review date, it shall serve a written reminder on the person in question. The reminder must indicate that the land or mineral is included in a mining site, comply with the requirements of the review notice in certain respects, and be served on or before the date falling four weeks before the first review date.

92. In my opinion, the failure to serve a written reminder is a procedural error. It is not, however, likely to mean that the material planning permissions remained extant indefinitely or that paragraph 7 never operated, provided that the original paragraph 4 notice was validly served and gave the required information, including the review date and the consequence of not making an application by that date.

93. The reminder requirement is plainly intended as an additional safeguard against inadvertent loss of rights. It is not expressed in paragraph 7 as a condition precedent to cessation. Paragraph 7 asks whether an application has been served by the review date or later agreed date. It does not say that cessation occurs only if a reminder has also been served. If Parliament had

intended service of a reminder to be a condition of cessation, it could have said so expressly.

94. That said, failure to serve the reminder may be relied upon by the applicant as part of a fairness or legitimate expectation argument. The applicant may contend that the authority cannot rely on paragraph 7 where it failed to comply strictly with paragraph 4. The strength of that argument would depend on the content of the original notice, the knowledge of the applicant, any prejudice caused by the absence of the reminder, and the extent to which the statutory purpose of the reminder was otherwise achieved.

95. On the material presently available, I agree with Ms Nina Pindham that the omission is unlikely to be fatal to the process. It would be odd if an applicant who had been served with a valid review notice, knew the review date, requested an extension before that date, and was told that the due date remained 31 October 2016, could avoid paragraph 7 altogether because the later reminder was not sent. But I would check the original review notice before expressing this conclusion finally.

96. I therefore answer question (e) in this way. The failure to serve the reminder is a procedural error and a litigation risk factor. It does not, in my view, preserve the working permissions if a valid original notice was served and no application or later agreed date existed by the review date. It does not provide a basis for the authority to approve the 2023 ROMP application.

Question (f): *Vattenfall*

97. *Vattenfall Wind Power Ltd v Scottish Ministers* [2009] CSIH 27 was decided by the Inner House of the Court of Session. It concerned the time for appealing against non-determination of a planning application where the statutory language permitted an extended period to be agreed in writing between the applicant and the authority. The relevant wording included the phrase "within such extended period as may at any time be agreed upon in writing between the applicant and the authority", which is closely similar to the language in paragraph 7 of Schedule 14.

98. In the earlier opinion to which my attention has now been drawn, I examined *Vattenfall* in the context of appeals against non-determination and extensions of time. That opinion records that the applicant applied on 10 April 2003 for planning permission for twelve wind turbines and related developments; that the applicant and the local planning authority later agreed in writing an extension of time to 31 December 2007; but that at the date of that agreement the time within which the authority should have determined the application had already passed by more than four years and two months.

99. The Inner House held that the applicant's right of appeal to the Scottish Ministers had been irretrievably lost. The Opinion of the Lord Justice Clerk stated at paragraph 9:

> "When an applicant submits a planning application, he has certain rights in relation to the planning authority and certain separate rights in relation to the Scottish Ministers. In relation to the planning authority, the applicant has the right to a decision within the statutory period; that is to say, the period prescribed … or any extension of that period that may be agreed upon by the applicant and the planning authority. If the planning authority fails to make a decision within that period, the applicant is at once entitled to appeal to the

Scottish Ministers. His right to do so lasts for a period of six months from the date on which the statutory period has expired."

100. The Court continued at paragraph 10:

"If the applicant appeals within that period, the jurisdiction to determine the application passes from the planning authority to the Scottish Ministers. If the applicant does not appeal within that period, the planning authority remains seised of the application and is obliged to make a decision on it. That principle was decided by the House of Lords *in London and Clydeside Estates Ltd v Aberdeen District Council* and was applied in the Outer House in *Bovis Homes (Scotland) Ltd v Inverclyde District Council*. Neither of these decisions deals expressly with the question whether in that event there is a point at which the authority's continuing obligation to determine a planning application comes to an end. In my opinion, it is unnecessary for us to consider that question. Even if counsel for the appellant is right in submitting that that obligation subsists indefinitely and that the power of the applicant and the planning authority to agree to extend the time for the making of a decision is not subject to any time-limit at all, those principles apply only in a question between the appellant and the planning authority."

101. At paragraph 11, the Lord Justice Clerk said:

"The applicant's rights in relation to the respondents are an entirely separate matter. In my opinion, the clear meaning of the legislation is that in relation to an individual planning application the applicant has one single right of appeal, that that right emerges after the expiry of the statutory period …, and that the respondents have no discretion to extend the six-month time-limit within which the appeal must be lodged."

102. At paragraph 12, the Court concluded:

"The respondents would have had jurisdiction in this application only if the appellant had taken an appeal against a deemed refusal and had done so within the six-month time-limit. Since the appellant did not do so, I conclude that even if its right to a decision by the planning authority still subsists, its right to invoke the jurisdiction of the respondents in this application has been irretrievably lost."

103. The importance of those passages for present purposes is not that *Vattenfall* concerned a ROMP application. It did not. Its importance lies in the treatment of materially similar statutory words permitting an extended period to be agreed "at any time". The Court treated the statutory consequence of expiry as real and not capable of retrospective displacement so as to revive a jurisdiction which had already been lost.

104. I accept that *Vattenfall* concerned the right to appeal against non-determination, whereas the present matter concerns the alleged cessation of a valuable mineral permission. That is a distinction. However, it does not in my view undermine the force of the analogy. The present statutory wording is, if anything, stronger because paragraph 7 expressly provides that the permission itself "shall cease to have effect". The question is whether, after that consequence has occurred, the parties may by later agreement undo it. *Vattenfall* supports the answer that they may not.

105. The applicant and the MPA may say that *Vattenfall* concerned only the relationship between an applicant and the Scottish Ministers, and that the local planning authority remained seised of the application. That is true on the facts of *Vattenfall*, but it does not assist here. In the present case, paragraph 7 does not simply remove a route of appeal while leaving an application before the authority. It extinguishes the permission, save for restoration and aftercare. Once the permission has ceased to have effect, there is no extant permission to which a paragraph 6 application can attach.

106. The applicant and the MPA may also rely on *London & Clydeside Estates Ltd v Aberdeen District Council* [1980] 1 WLR 182 and *Bovis*

Homes (Scotland) Ltd v Inverclyde District Council 1982 SLT 473. Those cases show that a planning authority's duty to determine or issue a decision may continue notwithstanding expiry of the ordinary period. But they do not show that a separate statutory right once lost, or a statutory permission once ceased, can be revived after Parliament has attached a final consequence to non-compliance. In *London & Clydeside*, Lord Fraser stated:

> "The expiry of the two months' period from receipt of the application is not, on any view, an absolute bar to issue of a certificate because the period can be extended by agreement: see s 26(4). Moreover, and this is a point of importance, an extension can be agreed on 'at any time'. In my opinion those words mean at any time either during the period of two months or after the end of the period, and they are a positive indication that the power and duty of the local planning authority to issue a certificate do not cease at the end of the period."

107. The passage does not show that a separate statutory right once lost can be revived. Indeed, *Vattenfall* made precisely that distinction. Even if the authority's obligation to determine continued, the applicant's right to invoke the jurisdiction of the Scottish Ministers had been irretrievably lost. The present case is stronger still because the permission itself is said to have ceased to have effect.

The binding or effectively binding status of Vattenfall in Scotland and England

108. It is also necessary to deal directly with the contention that *Vattenfall* may be dismissed because it is a Scottish case. In my view that contention should be rejected. It is true that not every Scottish decision binds an English court. But that general proposition requires important qualification

where the decision is one of the Inner House of the Court of Session, where the point was fully argued, where the decision was unanimous, and where the court is construing statutory language which is common, materially identical, or at least materially indistinguishable from the language before the English court.

109. As a matter of Scots law, *Vattenfall* is binding authority in Scotland. It was a decision of the Inner House, the appellate division of the Court of Session. It binds the Outer House and inferior Scottish civil courts unless and until departed from by the Inner House itself in an appropriate case or displaced by the Supreme Court. That is not merely a matter of persuasiveness. It is binding Scottish appellate authority.

110. The more subtle question is its effect in England and Wales. In my earlier opinion on extensions of time, I explained why *Vattenfall* should, at least for practical purposes, be treated as binding at first instance in England and Wales on the relevant point. The starting point is *Re Hartland* [1911] 1 Ch 459, where Swinfen Eady J stated:

> "Where the exact point has been raised by a special case, and fully argued, and decided by an unanimous judgment of the Court of Session, and where the question is simply one that turns upon the construction of a statute which extends to Scotland as well as to England, I think my duty as a judge of first instance is to follow that decision, leaving the parties, if so advised, to have it reviewed elsewhere."

111. That statement is of considerable importance. It is not enough to say that Scottish decisions are only persuasive. Where the conditions identified in *Re Hartland* are met namely, that the point is fully argued, the judgment is unanimous, and the question turns on a statute of common application, the English judge of first instance should follow the Scottish decision.

112. The same principle was considered in the planning context in *Riordan Communications Ltd v South Buckinghamshire District Council* [2000] 1 PLR 45. The judge there considered a unanimous decision of the Inner House on materially equivalent planning legislation and said:

> "The case was argued by counsel on both sides on the basis that there was no decision which was binding on me, and that my duty was to treat them all with respect, even the unanimous decision of the Inner House. In the course of preparing this Judgment, it became clear to me that the unanimous decision of the Inner House was in fact binding on me (see *Re Hartland* [1911] 1 Ch. 459, *Brooks v IRC* [1913] 3 KB 398) for the relevant statutes are in effect in almost identical terms or, if not actually binding (for that rule may be restricted to revenue cases or to cases where the statute in question applies to both countries: see Halsbury's Laws of England, 4th edition, 1999, Supplement Vol 26 at 585), should be treated with such a high degree of respect as makes in practice little difference to a judge of first instance in England."

113. That passage is helpful for present purposes because it arises in the planning field and expressly recognises that, even if the strict binding rule is not universally applicable, the practical position may be the same. A unanimous Inner House decision on materially equivalent statutory provisions should be treated by an English judge of first instance with such a high degree of respect that there is in practice little difference.

114. Academic commentary also supports that approach. J.K. Bentil, in "Stare Decisis and Scottish Judicial Decisions" [1972] Modern Law Review 537, observed:

> "Apart from the fact that some Scottish judicial decisions which go on appeal to the House of Lords may create binding precedents for the English Courts, the effect on English courts of certain Scottish judicial decisions in their own right appears to have received little or

> no attention this side of the border. Theory has it that generally Scottish judicial decisions are not binding on the English courts but have persuasive effect only. But in actual practice, the weight of authority on this side of the border tends to suggest that certain Scottish judicial decisions, notably those concerned with the interpretation of statutes of common application on both sides of the border, are indeed binding on English courts."

115. In summary therefore *Vattenfall* is binding Scottish appellate authority; that it is, on the *Re Hartland* principle, binding or arguably binding on an English first instance judge where the same statutory construction point arises under materially common legislation; and that, at the very least, under *Riordan*, it should be followed unless and until the Court of Appeal or Supreme Court decides otherwise.

116. Applying *Vattenfall* here, the MPA and Tuckwell could not agree in 2022 to extend the time for submission of a ROMP application if the effect of non-submission by 31 October 2016 was that the permissions had already ceased to have effect on 1 November 2016. An agreement made after the statutory consequence has taken effect cannot revive the right unless the statute expressly says so. Paragraph 7 does not say so.

North Lincolnshire and statutory finality

117. *R v North Lincolnshire Council ex parte Horticultural and Garden Sales (Humberside) Ltd* [1998] Env LR 295 concerned Schedule 13 rather than Schedule 14. It is therefore not directly determinative. Nonetheless, it is relevant for two reasons. First, the court in *North Lincolnshire* applied strict statutory language even though the outcome was harsh. The recorded formulation is that the judge reached the conclusion "with regret, but without hesitation". That accords with the ordinary approach to statutory

schemes which attach specific legal consequences to failure to comply with prescribed steps. Secondly, *North Lincolnshire* identified the statutory purpose as "certainty and finality as to the sites enjoying mineral planning permission". That purpose resonates strongly with the present issue. A construction under which permissions may be revived many years after cessation by later agreement would create uncertainty rather than finality.

118. I accept that Schedule 14 contains the later-date wording which Schedule 13 did not. That difference means *North Lincolnshire* cannot simply be transposed. But it does not follow that Schedule 14 permits indefinite revival. The better reconciliation is that Schedule 14 is more flexible before cessation because it allows a later date to be agreed, whereas Schedule 13 did not. Once cessation has occurred, the same concern for certainty and finality applies.

The ecological and planning context

119. The ecological background does not determine the paragraph 7 issue, but it explains why the question matters. The officer report records that the site is within the Oxford Green Belt, that the last active extraction was around 1995, and that the area has developed into a landscape containing lakes, wetland, woodland and a range of habitats. It records that Culham Brake SSSI lies approximately 500 metres away and that the site forms a large part of the Radley Gravel Pits Local Wildlife Site and the Thames Radley to Oxon Conservation Target Area.

120. The officer report also records that the Council's Senior Biodiversity Officer maintained objections on the basis that the proposal would result in biodiversity loss and significant adverse impacts on priority and

irreplaceable habitats. The Council's own report identifies the tension between permitting mineral extraction under an old permission and meeting modern environmental standards.

121. The Council's dilemma is understandable. If it imposes a condition preventing development in areas of irreplaceable or priority habitat, the applicant says that such a condition would sterilise the site and give rise to a substantial compensation claim. If the Council omits such a condition, it may permit significant ecological harm contrary to national and development plan policy. The officer report recognises that this is an unusual and difficult situation.

122. However, the dilemma only arises if the permissions remain extant and the ROMP application is valid. If the permissions ceased to have effect on 1 November 2016, the Council is not required to choose between ecological harm and compensation within the ROMP regime. The applicant would need to seek fresh planning permission for mineral working, in which case the full modern planning, environmental, ecological, Green Belt, amenity, traffic and restoration issues would be considered through a conventional planning application.

C G Fry and the applicant's rights argument

123. The applicant has relied upon *C G Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 35. That case concerned the effect of outline planning permission and whether later national *policy* concerning Ramsar sites could prevent discharge of

conditions in circumstances where the matters relied upon did not relate to the conditions requiring approval.

124. *C G Fry* may assist the general proposition that once planning permission is granted, the developer acquires statutory rights and later policy cannot simply reopen the principle of development. It does not, however, answer the present question. The present question is not whether later *policy* can cut down an extant permission. It is whether the statutory code governing periodic review itself caused the permission to cease to have effect because no application was made by the Review Date and no later date had been agreed.

125. A statutory planning right is defined by the statute which governs it. If that statute provides that the right shall cease to have effect upon failure to comply with a review requirement, then the right is inherently conditional upon compliance with that requirement. *C G Fry* does not establish that planning permissions are immune from express statutory cessation provisions. It therefore does not undermine the conclusion that paragraph 7, if engaged, brought the mineral permissions to an end.

Question (g): procedural steps if the permissions have ceased to have effect

126. If the mineral permissions ceased to have effect on 1 November 2016, the MPA should not determine the ROMP application. It should treat the application as incapable of determination because the permissions to which it purports to relate no longer exist for working purposes. The authority should notify the applicant that it has no jurisdiction under paragraph 6 of Schedule 14 to determine conditions.

127. The authority should in my view place a supplementary report before committee explaining the jurisdictional issue, the effect of paragraph 7, the absence of a pre-review-date extension agreement, the inapplicability of regulation 54 suspension, and the consequent inability to determine the application. It should invite committee to resolve that the application cannot be entertained or determined under Schedule 14.

128. The authority should also distinguish between the cessation of working rights and the survival of restoration and aftercare conditions. Paragraph 7 expressly preserves the permission insofar as it imposes restoration or aftercare conditions. The authority should consider separately what steps, if any, are available or required to secure restoration or aftercare obligations which survived cessation.

129. The authority may need to reverse or withdraw the validation of the application. The client's letters refer to section 327A of the Town and Country Planning Act 1990 and the principle that an authority may not entertain an application which does not comply with statutory requirements. Whether section 327A applies directly to a Schedule 14 ROMP application may require further procedural consideration, but the underlying point is sound: if the statutory jurisdictional basis is absent, validation cannot cure the defect.

130. The authority should make clear that a conclusion that the ROMP application is invalid does not prevent Tuckwell from applying for fresh planning permission for mineral extraction if it wishes to do so. Such an application would be determined on its merits under the statutory planning regime and by reference to current law and policy. That is not a reason to

treat the ROMP application as valid, but it is relevant to proportionality and fairness.

Question (h): judicial review and costs risk if the ROMP Application is approved

131. If the authority approves or purports to determine the ROMP application notwithstanding the matters above, I consider that the client would have a realistic basis for a successful judicial review. The strongest claim would be that the authority acted without jurisdiction because the mineral permissions had ceased to have effect under paragraph 7 on 1 November 2016 and there was no extant permission to which new Schedule 14 conditions could attach.

132. The grounds would likely include error of law in construing paragraph 7, failure to give effect to the words "shall cease to have effect", unlawful reliance on a post-review-date agreement to revive permissions, misdirection as to regulation 54 suspension, failure to identify any written later date agreed before the Review Date, and failure to address whether the application was valid or capable of determination.

133. A further ground may be failure to take into account a mandatory relevant consideration, namely whether the authority had jurisdiction at all. If the committee is advised merely that there is a difference of legal opinion and that it may proceed, without being given a clear analysis of the status of the permissions as at 1 November 2016, the adequacy of the advice itself may be challenged.

134. There may also be grounds related to reasons. If committee proceeds despite the jurisdictional objection, it should explain why it accepts the post-review-date extension construction, why it considers any pre-review-date correspondence sufficient, why regulation 54 or any other mechanism preserved the permissions, why *Vattenfall* and *North Lincolnshire* do not alter the position, why the statutory purpose of the ROMP regime is not undermined by indefinite revival, and why any reliance on the 2014 Inspector's decision is consistent with *Reprotech*.

135. In my view, the prospects of a successful jurisdictional judicial review would be realistic. I would not of course put the prospects of success as certain. The applicant and authority may well seek to rely upon the "at any time" wording, the different language of Schedule 14 from Schedule 13, the previous 2014 Inspector's decision, alleged legitimate expectation, expenditure and prejudice, and Convention rights, or a selection of these points. However, for the reasons I have set out in this Opinion, the better view and one most likely to succeed is that the permissions are now out of time to be revived.

136. As to costs, the ordinary position in judicial review is that costs follow the event, subject to the Court's discretion. If the client brought a claim and succeeded, the authority would ordinarily be at risk of paying the claimant's costs, subject to any costs protection or Aarhus costs regime point if applicable. If the client brought a claim and failed, the client would ordinarily be at risk of paying the authority's and potentially an interested party's costs, again subject to any protective costs rules which may apply in environmental proceedings.

137. The authority would also face costs and delay. A claim would likely require acknowledgement of service, summary grounds of resistance, consideration of interim relief if works could otherwise proceed, and potentially a substantive hearing if permission were granted. If the decision were quashed, the matter would return to the authority. The applicant may also seek to participate as an interested party and resist the claim.

138. In my opinion it would be legitimate for the client to notify the authority that approval would give rise to a realistic prospect of judicial review. The focus should be that the authority must not knowingly assume a jurisdiction which is seriously disputed and, on the better view, absent.

Question (i): other matters which may assist the MPA

139. There are several matters which, in my view, should be drawn to the authority's attention. First, the authority should be asked to identify precisely the statutory power under which it says the mineral permissions were suspended on 1 November 2016. If the answer is regulation 54 of the 2017 Regulations, that is inconsistent with the Council's own advice that regulation 54 is not engaged absent a ROMP application.

140. Secondly, the authority should be asked to disclose any document evidencing an agreement before 31 October 2016 to extend to a specified later date. Without such a document, the authority should not be permitted to rely on vague references to being "within time" or on a course of conduct which post-dates the statutory deadline.

141. Thirdly, the authority should be asked to identify the status of the permissions between 1 November 2016 and the 2022 agreement. If they

were not suspended, not extinguished and not subject to a later agreed date, the authority must explain what statutory category they occupied. In my opinion there is none.

142. Fourthly, the authority should be asked to explain why an interpretation which permits revival years after cessation is consistent with certainty and finality in the minerals review regime. The authority's interpretation would have implications beyond this site because it could enable old permissions thought to have lapsed to be brought back into life by agreement long after the relevant review date.

143. Fifthly, if the authority relies upon the 2014 Inspector's decision, it should be asked to identify precisely what statutory jurisdiction the Inspector was exercising, what issue was actually determined, whether any certificate of lawfulness was applied for or granted, and how the decision could determine the later statutory consequence of a 2015 review notice and a 2016 failure to submit a ROMP application. In my opinion, *Reprotech* makes clear that reasoning about the scope or lawfulness of a permission in one statutory context is not to be treated as if it were a formal certificate of lawfulness in another.

144. Sixthly, if the authority rejects the jurisdictional objection, it must still address the site-boundary and condition-enforceability issues raised in the client's earlier letters. A valid ROMP application must relate to the relevant mining site and conditions must be clear, enforceable and properly connected to the land and permissions in question. Confusion between the whole ROMP site and the extraction area would be a further source of legal vulnerability.

145. Seventhly, if contrary to my view the authority proceeds to determine conditions, the ecological conflict must be addressed directly. The authority cannot simply say that because it fears compensation it will omit conditions which its own ecologist considers necessary to prevent unacceptable harm to priority and irreplaceable habitats. If such conditions are omitted, the reasons for doing so must be lawful, evidence-based and consistent with the Schedule 14 compensation regime and national and local policy.

146. My overall conclusion is that, on the documents presently available, the mineral permissions ceased to have effect on 1 November 2016, except insofar as they imposed restoration or aftercare conditions. No ROMP application was made by the Review Date. No written agreement to a later date before the Review Date has been evidenced. Regulation 54 suspension was unavailable because no ROMP application had been made. The later 2022 agreement could not revive permissions which had already ceased to have effect.

147. The statutory purpose of the ROMP regime reinforces that conclusion. The Environment Act 1995 introduced a disciplined system for initial and periodic review because old mineral permissions needed to be modernised, because mineral working may continue for many years, because social and environmental standards change, and because there was a need for regular review so that modern standards are met. That purpose would be undermined if a permission that had ceased to have effect could be revived years later by administrative agreement.

148. *Vattenfall* is binding in Scotland as a decision of the Inner House. In England and Wales, it should be treated as binding or effectively binding at first instance where the same or materially identical statutory wording arises, applying *Re Hartland*, *Brooks* and *Riordan*. The MPA should not be permitted to dismiss it as merely a Scottish authority. It is authority, at the least of very high practical force, that an "at any time" extension provision does not retrospectively revive a jurisdiction or right which has already been irretrievably lost.

149. The 2014 Inspector's decision does not alter the position. Even if the Inspector proceeded on the basis that the mineral permissions were then extant, that was not a CLEUD or CLOPUD. It did not conclusively determine lawfulness for all future purposes. It could not decide whether, after a later statutory review notice and failure to submit a ROMP application by 31 October 2016, the permissions ceased to have effect on 1 November 2016. *Reprotech* confirms that merely having regard to the scope of a permission in one statutory context does not amount to a formal statutory determination under the certificate regime.

150. The MPA therefore has no jurisdiction to determine application MW.0041/23 under paragraph 6 of Schedule 14. Its validation of that application in February 2023 does not cure the absence of jurisdiction. The authority should treat the application as incapable of determination and should not approve or determine conditions under it.

151. The subsequently disclosed historical materials strengthen that conclusion. The Inspector's 2014 report, the Council's October 2015 Review Letter and the formal Notice of Site Subject to Periodic Review all demonstrate that the permissions were being treated as deemed

permissions subject to a fresh Schedule 14 review process. The documents presently disclosed do not reveal any written agreement postponing the review date before 31 October 2016. The clearest express agreement currently identified is the August 2022 agreement concerning submission by 28 February 2023. On its face, that agreement post-dated the review deadline by almost six years.

152. In my opinion, those documents materially strengthen the view that the real question is not whether an agreement existed in August 2022, but whether any legally effective agreement existed before the statutory deadline expired in October 2016. On the material presently available, no such agreement has been identified. If the authority nevertheless approves or purports to determine the application, the client would, in my opinion, have realistic prospects of a successful judicial review on the jurisdictional ground. The authority and applicant may well seek to rely upon the "at any time" wording, legitimate expectation and property-rights arguments. However, the client's construction is, in my view, the better one and is supported by the mandatory language of paragraph 7, the statutory purpose of certainty and modernisation, the absence of a revival mechanism, the inapplicability of regulation 54, the binding or effectively binding authority of *Vattenfall*, and the distinction drawn in *Reprotech* between ordinary planning reasoning and a statutory certificate of lawfulness.

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