

[REDACTED]
Sent: 04 May 2026 15:59
[REDACTED]

Subject: Formal Submission: Legal Grounds of Challenge – NMA/2026/0006 & NMA/2026/0007

Dear Mr Stokes,

A formal objection and legal grounds of challenge in respect of applications NMA/2026/0006 and NMA/2026/0007 is attached.

Given the nature of the issues identified, it is appropriate that this matter is brought to your attention at Chief Executive level.

The attached submission sets out the legal position in relation to the proposed use of section 96A of the Town and Country Planning Act 1990.

That position is not ambiguous.

The amendments sought, principally the re-sequencing of conditions central to the outline permission, are material as a matter of law. They do not fall within the scope of section 96A.

The consequence follows.

Any determination of these applications under section 96A would give rise to a clear and foreseeable risk that the decision would be made outside the statutory powers of the authority.

The submission further addresses the interdependency between the outline permission (SMD/2016/0378) and subsequent approvals, and the legal effect of altering the underlying control framework. The resulting inconsistency engages established authority principles confirmed by the Supreme Court.

In that context, the issues identified cannot properly be characterised as matters of routine planning judgement.

It follows that determination under delegated powers would not withstand scrutiny. The expectation is that the applications are referred to the Planning Applications Committee, with the legal issues identified addressed expressly within the officer's report and brought clearly and explicitly to the attention of Members as part of the decision-making process.

This submission is provided so that the authority is on notice of the position prior to any determination.

This submission should be entered onto the planning register and made publicly available without delay in respect of both applications NMA/2026/0006 and NMA/2026/0007.

Yours faithfully,
Jarrod Ford

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FORMAL OBJECTION AND LEGAL GROUNDS OF CHALLENGE
Applications: NMA/2026/0006 and NMA/2026/0007
Moneystone Quarry

Date: 4th May 2026.

1. INTRODUCTION

This submission constitutes a formal objection to applications NMA/2026/0006 and NMA/2026/0007.

It also sets out the legal basis upon which any decision to determine these applications under section 96A of the Town and Country Planning Act 1990 would be unlawful.

These applications purport to be “non-material amendments” to:

- SMD/2016/0378 (Outline Permission)
- SMD/2019/0646 (Phase 1 Reserved Matters)

in circumstances where:

- SMD/2023/0532 (Phase 2) has already been granted;
- those permissions are materially reliant upon the control framework established by the outline permission; and
- the proposed amendments seek to alter the timing, sequencing, and operation of conditions central to that framework.

The legal position admits of only one lawful conclusion:

The proposed amendments are material as a matter of law and cannot lawfully be determined under section 96A.

2. STATUTORY FRAMEWORK

2.1 Section 96A TCPA 1990

Section 96A provides:

A local planning authority may make a change to any planning permission... if they are satisfied that the change is not material.

There is no statutory definition of “non-material”, but the legal test is established:

Materiality is a question of fact and degree assessed in the context of the permission as a whole.

2.2 Legal Limits

Section 96A:

- cannot alter the substance of a permission
- cannot change how or when key safeguards operate
- cannot be used where the change would have been relevant to the original decision-maker

Where a change is material, the only lawful routes are:

- Section 73; or
- a fresh application

3. THE TEST OF MATERIALITY

A change is material where it:

- alters the substance or effect of the permission
- changes the timing or enforceability of controls
- affects the planning balance
- impacts reliance by decision-makers or third parties

Critically:

A change to the timing of compliance with a condition, particularly a pre-commencement condition, is material.

4. CONDITIONS AS LEGAL CONTROLS

Conditions are not administrative.

They are integral to the legality of the permission.

They:

- secure mitigation
- control risk
- define how development may lawfully proceed

Pre-commencement conditions exist because:

Development must not lawfully begin until specified safeguards are secured.

Accordingly:

Deferring such conditions fundamentally alters the nature of the permission.

5. INTERDEPENDENCY OF PERMISSIONS

The planning structure is legally tiered:

- 0378 → establishes the control framework
- 0646 → relies upon that framework
- 0532 → relies upon that framework

This creates a dependency chain.

5.1 Legal Consequence

The outline permission forms the legal and factual foundation of subsequent permissions.

Therefore:

It is unlawful to retrospectively alter that foundation in a manner which undermines decisions already taken in reliance upon it.

6. MISCHARACTERISATION OF THE OUTLINE PERMISSION

The decision notice for SMD/2016/0378 expressly characterises the permission as a “resubmission” of SMD/2014/0682, a scheme which had previously been refused.

That characterisation is legally significant.

A planning permission must be interpreted according to its own terms, and as a self-contained grant. It is not lawful to treat a permission as carrying forward, incorporating, or inheriting the substance of a previously refused application unless that is expressly and lawfully achieved through the application itself.

The description of SMD/2016/0378 as a “resubmission” introduces ambiguity as to:

- the scope of the permission actually granted;
- the extent to which it was intended to replicate or depart from the refused scheme; and
- the basis upon which the decision-maker assessed the planning balance.

This lack of clarity is material.

It follows that:

The outline permission does not present as a clean, discrete, and internally coherent consent, but as one whose scope and basis are already compromised by its own characterisation.

That has direct legal consequences in the present context.

Where a permission lacks clear internal coherence, it is not lawful to:

- retrospectively alter its control framework;
- re-sequence its conditions; or

- modify the timing and operation of safeguards

under section 96A.

Such an approach would compound, rather than resolve, the underlying uncertainty, and would further detach the resulting development from the scheme as originally approved.

Accordingly:

The attempt to rely upon section 96A in these circumstances is not merely unlawful in isolation, but is aggravated by the unstable and internally inconsistent character of the underlying permission itself.

7. PILKINGTON PRINCIPLE

Pilkington v Secretary of State [1973]

A planning permission must be interpreted as a whole and cannot be implemented inconsistently with its terms.

Accordingly:

Permissions cannot be manipulated to produce outcomes not contemplated by the original scheme.

8. HILLSIDE PRINCIPLE

Hillside Parks Ltd v Snowdonia [2022] UKSC 30

Where development is carried out inconsistently with the permission, the permission can no longer be relied upon.

Further:

A coherent scheme must be implemented as approved.

9. EFFECT OF THE PROPOSED AMENDMENTS

The applications seek to:

- defer control of traffic and routing
- defer highway mitigation
- defer operational safeguards
- defer design and material controls

The stated justification is:

The information is not required prior to commencement.

10. WHY THE CHANGES ARE MATERIAL

10.1 Deferral of Safeguards

The amendments:

- remove pre-commencement control
- permit development before mitigation is secured

This alters the legal and operational basis of the permission.

10.2 Highway and Access Controls

These conditions go directly to:

- safety
- access
- traffic impacts

Altering their timing changes the acceptability of the development.

10.3 Change in Risk

Originally:

- risk controlled before development

Now:

- risk deferred into the development phase

This is a substantive change in planning control.

10.4 Planning Balance

The development was approved on the basis that:

- mitigation would be secured at defined stages

Altering those stages re-opens the planning balance.

11. MISUSE OF SECTION 96A

Section 96A is not a mechanism to:

- weaken conditions
- defer safeguards

- alter sequencing of control

These applications do all three.

12. INTERACTION WITH EXISTING PERMISSIONS

Permissions 0646 and 0532 were granted on the basis that:

- the outline framework remained intact
- conditions would operate as imposed

Altering that framework:

undermines those permissions and creates legal inconsistency.

13. DELEGATED AUTHORITY

If conditions are:

- altered in substance
- re-sequenced

then:

any reliance on delegated authority is unlawful.

These applications must be determined by the Planning Applications Committee.

14. APPLICATION OF THE LEGAL TEST

Each of the following is present:

- alteration of timing of conditions
- removal of pre-commencement safeguards
- change in risk allocation
- impact on planning balance
- reliance by subsequent permissions

Each is independently sufficient to establish materiality.

Together:

They admit only one conclusion: the changes are material.

15. LEGAL CONSEQUENCE

The consequence is absolute:

The applications fall outside the lawful scope of section 96A.

Any attempt to approve them under that provision:

would be unlawful.

16. GROUNDS OF CHALLENGE

Any such decision would be vulnerable to immediate challenge on grounds including:

- error of law
- failure to consider interdependency
- irrationality
- inconsistency with binding authority

17. FINAL POSITION

This is not a minor amendment.

It is:

a substantive attempt to reconfigure the legal and operational framework of a multi-phase development.

The statutory mechanism relied upon does not permit this.

18. REQUIRED OUTCOME

The applications must be refused.

If pursued, they must be brought forward under:

- section 73; or
- a fresh planning application

END