

IN THE COURT OF APPEAL

BETWEEN:

**REGINA
(on the application of COAL ACTION NETWORK)**

Appellant

v

**(1) WELSH MINISTERS
(2) COAL AUTHORITY**

Respondents

and

ENERGYBUILD MINING LIMITED

Interested Party

APPELLANT'S GROUNDS OF APPEAL

All references in the form (§n) are to the judgment [2023] EWHC 1194 (Admin) (“the Judgment”)

1. By Order dated 31 May 2023, Steyn J granted permission to appeal in respect of Grounds 1, 2, and 3 of the Claimant’s application for Permission to Appeal dated 24 May 2023, against her decision to dismiss the Claimant’s judicial review (referenced above). Permission to appeal was refused in respect of Grounds 4 and 5.
2. Grounds 1-3 (as summarised in the application for permission to appeal submitted to the Judge) are:
 - (1) The Judge erred in law in finding that the Claimant’s interpretation is not retrospective to a degree that would be caught by paragraph 6 of Schedule 7 to the Wales Act 2017, but was nonetheless retrospective because it attached a new disability to “existing rights”.
 - (2) The Judge erred in law when treating a coal mining licence, with an authorisation which was not in effect, as a possession within the meaning of Article 1 of Protocol 1 of the European Convention on Human Rights (“A1P1”).
 - (3) In the alternative, the Judge erred in law in:

- a. assuming when considering the degree of unfairness that there would necessarily be a deprivation and, if there were, that the deprivation would necessarily be unfair; and
 - b. failing to address proportionality when considering potential application of A1P1 and/or the need to strike a balance when applying the common law principle of fairness to statutory provisions with potential retrospective effect.
3. The Appellant renews its application for permission to appeal under Grounds 4 and 5, relating to the Coal Authority's decision, dated 25 January 2022, to approve Energybuild Mining Ltd.'s application for a coal mining licence by means of deconditionalisation.
4. The Judge's conclusions in respect of that decision proceeded on the assumption that the grant of a licence under the Coal Industry Act 1994 can approve coal mining operations 'in principle' (§129), and that because operations had already been approved in principle when the licence was granted, the scope of the Coal Authority's discretion was necessarily limited at the point of determining whether those conditions had been satisfied (§128).
5. The Appellant contends that the Judge was wrong:
 - (4) In determining that 'in principle' approval for coal mining operations can be given within the statutory framework for coal licensing, thereby importing planning law concepts and jurisprudence into licensing law, when the Town and Country Planning Act 1990 and the Coal Industry Act 1994 comprise complete, and separate, statutory schemes.
 - (5) In applying an inconsistent approach, finding that the terms of the Licence did not assist in construing the statutory interpretation of s.26A of the Coal Industry Act 1994 (§83), whilst in the same judgment finding that the scope of the Coal Authority's determination was controlled by the terms of the Licence (§§116, 126).
6. The Appellant contends that an appeal on either or both of the above Grounds would have a real prospect of success, and so submits that permission to appeal should be granted.

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ESTELLE DEHON KC
ASITHA RANATUNGA
CORNERSTONE BARRISTERS
2-3 GRAY'S INN SQUARE
LONDON
WC1R 5JH