

**RE: PLANNING PERMISSION AT HIGH CLOSE QUARRY, HIGH CLOSE FARM,
PLUMBLAND, CUMBRIA CA7 2HF**

**REVIEW OF OLD MINERALS PERMISSION, SCHEDULE 13 ENVIRONMENT
ACT 1995**

APPELLANT'S SUBMISSIONS IN REPLY

[*Pilkington/Hillside*]

INTRODUCTION

1. The Council makes brief submissions to the effect that the permission for the green land is no longer capable of permitting the working of the quarry on the basis of *Pilkington/Hillside*.¹ These submissions in reply seek to identify the relevant principles and apply them to the facts and circumstances at High Close.
2. The remaining submissions in the Council's pre-inquiry statement of case should not be taken to be accepted – they are not. However, the Inspector has the necessary material for those issues to be determined and there is no need to add to it.

PRINCIPLES

3. *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30² is well known. However, it is important to rehearse the principles which it establishes and those which it expressly does not disturb, and then to appreciate the extent of its effect on a

¹ §§29-30 of Appendix 5 to the Council's pre-inquiry statement

² Reported at [2022] 1 WLR 5077

minerals permission. In referring to *Hillside*, the Council is correct to draw attention to *Pilkington*³. *Hillside* largely re-states the law as established in *Pilkington*.

4. *Hillside* draws attention to the definition of development. The definition of development in s55 Town and Country Planning Act 1990 includes operational development and material changes of use. Minerals development is substantially different to most forms of operational development. It, and the key cases, are treated in this way in the Encyclopaedia of Planning Law⁴:

“In terms of general principle, the extraction of minerals is substantially different from building and engineering operations. It bears more similarity to the “use” limb of the definition of development to the extent that it is a continuing activity, frequently over a long term, and an end in itself. Its effect is destructive rather than constructive. Although for the general purposes of the Act mining is treated as an “operation,” it is a continuing operation and each shovelful extracted from an area after the initial cut is itself a mining operation constituting a separate act of development David (Thomas) (Porthcawl) Ltd v Penybont Rural District Council [1972] 3 All E.R. 1092, CA. For the purpose of discontinuance action under Sch.9, para.1, mining operations are deemed to constitute a “use” of land within the relevant provisions; and the Town and Country Planning (Minerals) Regulations 1995 (SI 1995/2863), reg.2, whilst maintaining that “use” in relation to the development of land does not include the use of land by the carrying out of mining operations reg.2(2), defines a number of exceptions to that general rule.”

5. If a consent is implemented but there is a second consent and the question arises whether it is lawful to develop according to the second consent, the test is “*whether it*

³ *Pilkington v Secretary of State for the Environment* [1973] 1 WLR 1527 is a case decided by the Divisional Court (Lord Widgery CJ, Bridge and May JJ). The facts were that the owner of a plot of land was granted planning permission to build a bungalow on the plot. After the bungalow was built, he discovered an earlier planning permission granted to the previous owner to build a bungalow on a different part of the same plot of land. The description of the development in the earlier permission and the relevant plan showed that it was contemplated that the rest of the plot would be used as a smallholding. The question was whether the landowner could lawfully build another bungalow in the location specified in the earlier permission.

⁴ [P55.01 Meaning of “development” and “new development”⁹](#)

*is possible to carry out the development proposed in that second permission, having regard to that which was done or authorised to be done under the permission which has been implemented”.*⁵

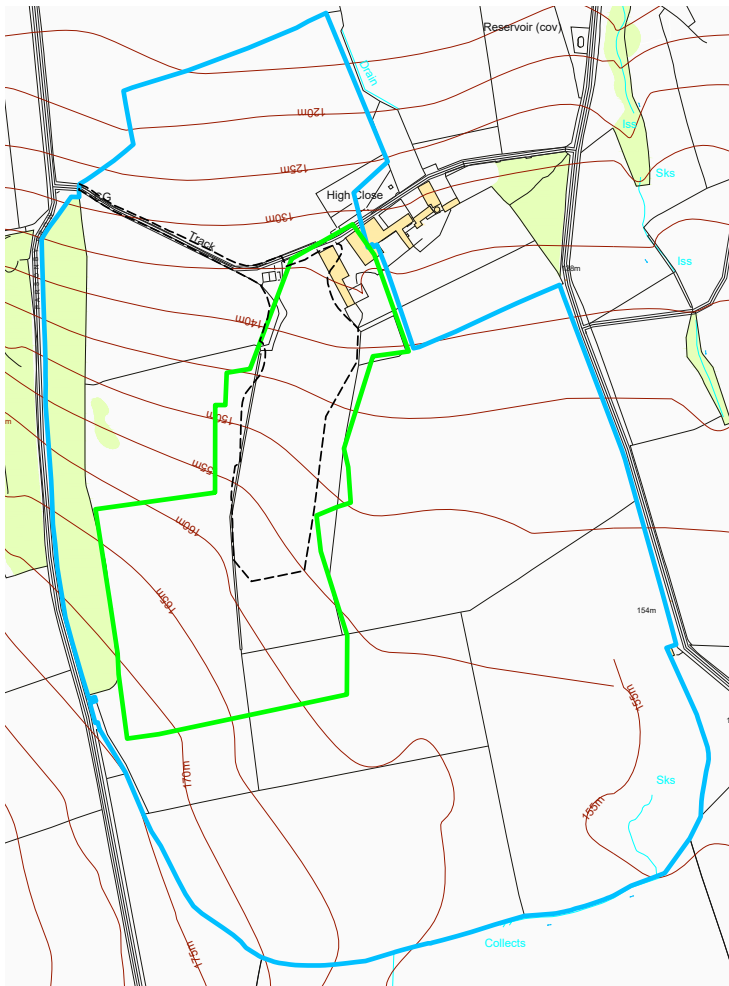
6. *Hillside* is not concerned with the compliance with planning conditions. This is very clear from the discussion of *Pilkington*. In that case, the court specifically avoided a conclusion on the basis of a failure to comply with a condition⁶. Rather, *Hillside* is about permissions for a whole development. It is about what happens part way through implementation of permission (1) when permission (2) comes along.

THE PERMISSIONS

7. The relevant areas have been plotted on a single plan, an extract of which is below. It is evident that there remains a substantial consented area within the green land which is unrelated to the landfilling.

⁵ §31 G

⁶ Page 1552, last paragraph



SUBMISSIONS

8. *Hillside/Pilkington* is of more limited application in a minerals context such as this when compared to built development comprising units of building operations. The permission, per the description of development, is to continue working. There is nothing to stop continued working.

9. It does not become impossible (using the language from *Hillside*) to continue working by reason of landfilling. The appellant does not wish to work mineral in the area which has been landfilled. The appellant simply wishes to continue working and there is evidently limestone within the green land for that working to continue.

10. Continued working does not become impossible by reason of any planning condition. As to conditions, the point taken by the Council is rather circular. The whole point of the ROMP is to review conditions. If the Council has a point to make about conditions, then it should do so in the context of the ROMP application and appeal. It should not take a bad point about a planning condition rendering a permission spent/abandoned or otherwise incapable of continued benefit.


4th December 2024