

“Hillside”

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Overlapping Parts of Planning Permissions

- *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] 1 WLR 5077
- A case about the “loss” of a 401 dwelling planning permission as the price of developing (coincidentally) 41. Net loss of 360 dwellings.
- An expensive loss for the well-advised developer
- A simple case with profound complex consequences
- A simple application of the 50 year old case of *Pilkington v Secretary of State for Environment* [1973] 1 WLR 1572
- Likely increase in section 96A and 73 applications, else risk enforcement
- The Risk: can the developer persuade the purchaser that there is no risk of hard won planning permission being lost?
- Impact on other regimes relying on planning permissions?

Statutory Framework

- Town and Country Planning Act 1990:
 - Section 55
 - Section 57
 - Section 70
 - Section 73
 - Section 75
 - Sections 91 and 92
 - Section 96A
- Nothing in “Hillside” restricts it or *Pilkington* to detailed planning permissions. Planning permission includes outline and detailed.

Pilkington

- The Facts
- Same Land Area:

B C then A

- A lost
- Why?
- The physical impossibility of simultaneous geophysical overlap of B and C with A
- Why so here? ...
- Why did C not result in loss of B?
 - Only a “condition” of B & a plan required one house
 - C aka a section 73 situation?

Hillside

- The Facts
- Same Land area:
 - January 1967: 1
 - Then: April 1967: 2
 - Then: **3-9**
 - From 1987: Then **A-H** (by the acquiring developer)
- 1 lawfully implemented by start of a road.
- Issues
- 2022: 1 is “lost”
- Why?
- Subsequent physical alteration of the land & actual overlaps
- What’s lawful? What’s “lost”? *Everything* else under 1.

Reminders & Clarification

- Planning History of a site cannot be relevant to the interpretation of a planning permission
- No such thing as a “local modification”
- *Lucas v Dorking and Horley Rural District Council* (1964) 17 P&CR 111 wrongly decided as Judge led into error by not recognising difference between spatial and temporal planning perspectives of a planning permission.
- (So-called) “drop-in planning permissions” dead? Seems so

The Route Ahead?

- Real risk arises for sites with/seeking 1+ planning permissions
- Supreme Court advises developers to use:
 - Section 96A or
 - Section 73, else
 - Risk enforcement
- Flexibility? Potentially, yes, but all turns on the terms of planning permissions.
- Going forwards:
 - site by site analysis required to establish correct baselines
 - Legal interpretation of each planning permission strongly advisable

Conclusions

- Real risk arises for sites with/seeking 1+ planning permissions
- It is the purchaser or Bank that will require to be assured of a subsisting planning permission
- As in *Hillside*, failing to ensure no loss of planning permissions could be very expensive
- Get Good and Experienced Advice, Early.

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